



CITY OF BUFFALO
DEPARTMENT OF LAW

EXHIBIT

C

JAMES C. KISTNER

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

IN THE MATTER OF THE CLAIM
OF
JAMES KISTNER,

Claimant,

- against -

THE CITY OF BUFFALO,

Respondent.

Examination under oath of JAMES C. KISTNER,
Claimant, taken pursuant to Section 50-h of the
General Municipal Law, in the Office of Buffalo
Corporation Counsel, 1137 City Hall, Buffalo,
New York, on June 27, 2017, commencing at
11:08 a.m., before ANNE T. BARONE, RPR, Notary
Public.

JACK W. HUNT & ASSOCIATES, INC.

1 APPEARANCES: JAMES M. OSTROWSKI, ESQ.,
2 63 Newport Avenue,
3 Buffalo, New York 14216,
4 (716) 435-8918,
5 jameso@apollo3.com,
6 Appearing for the Claimant.

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TIMOTHY A. BALL, ESQ.,
Corporation Counsel,
By MAEVE E. HUGGINS, ESQ.,
Assistant Corporation Counsel,
1137 City Hall,
Buffalo, New York 14202,
(716) 851-4334,
mhuggins@city-buffalo.com,
Appearing for the Respondent,
The City of Buffalo.

10 PRESENT: EARL KISTNER

11

11:08:26 12 JAMES C. KISTNER, 33 Schmarbeck,
11:08:42 13 Buffalo, New York 14212, after being duly called
11:08:42 14 and sworn, testified as follows:

11:08:48 15

11:08:48 16 EXAMINATION BY MS. HUGGINS:

11:08:48 17

11:08:50 18 Q. Nice to see you again. We met off the
11:08:51 19 record last week. My name is Maeve Huggins. I'm
11:08:54 20 an attorney for the City of Buffalo.

11:08:56 21 We're here today to discuss a notice of
11:08:58 22 claim that you filed regarding an incident
11:09:00 23 involving the Buffalo Police Department that you

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11:09:02 1 allege caused physical injuries to you.

11:09:05 2 What -- do you recall the date that that
11:09:07 3 incident occurred on?

11:09:09 4 A. January 1st.

11:09:12 5 Q. I'm going to ask you some questions
11:09:14 6 about your background, as well as regarding that
11:09:15 7 incident.

11:09:16 8 Have you ever testified before?

11:09:20 9 A. In a civil case?

11:09:21 10 Q. Any type of sworn testimony.

11:09:23 11 A. Yeah.

11:09:24 12 Q. In what context?

11:09:26 13 A. Criminal trial.

11:09:30 14 Q. Have you ever given deposition
11:09:32 15 testimony before?

11:09:33 16 A. No.

11:09:34 17 Q. It's going to be similar, but let me
11:09:37 18 just remind you of the ground rules.

11:09:39 19 We have a court reporter here who's taking
11:09:41 20 down everything that's being said. She can only
11:09:43 21 take down verbal answers. No head nods, shoulder
11:09:46 22 shrugs. So I'm going to ask that your responses to
11:09:49 23 my questions be verbal.

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11:09:50 1 If I ask you a question and you begin to
11:09:54 2 answer, I'm going to assume that you understood my
11:09:56 3 question. If you don't, just let me know and I'll
11:09:59 4 rephrase my question.

11:10:01 5 A. Okay.

11:10:02 6 Q. If at any point you need a break, let
11:10:03 7 me know. If I've just posed a question, I'm going
11:10:06 8 to ask that you answer the question before we take
11:10:08 9 that break.

11:10:13 10 The court reporter can't take down when two
11:10:16 11 people are speaking over each other, so I'm just
11:10:18 12 going to ask that you give me the courtesy of
11:10:20 13 allowing me to finish my question before you
11:10:22 14 answer, and I'll extend the same courtesy to you.

11:10:25 15 I think that's it for ground rules. Do you
11:10:30 16 understand and ready to proceed?

11:10:32 17 A. Yes.

11:10:33 18 Q. Before coming in here to testify today,
11:10:36 19 have you taken any drugs or alcohol that would
11:10:40 20 inhibit your ability to give truthful testimony
11:10:42 21 within the last 24 hours?

11:10:44 22 A. No.

11:10:45 23 Q. Did you skip taking any medication

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11:10:47 1 that you should have been taking within those last
11:10:49 2 24 hours?

11:10:49 3 A. No.

11:10:54 4 Q. In preparation for your testimony
11:10:56 5 today, did you review any documentation?
11:10:59 6 Photographs? Video?

11:11:02 7 A. Within the last 24 hours, no.

11:11:05 8 Q. Did you do any of that in preparation
11:11:07 9 last week when we had originally scheduled this?

11:11:10 10 A. No.

11:11:11 11 Q. Did you look at anything at all knowing
11:11:17 12 that you were going to give testimony today
11:11:20 13 regarding this incident?

11:11:24 14 A. The best way to answer that is I
11:11:27 15 haven't reviewed the video of what happened -- I
11:11:29 16 haven't reviewed the video in probably a month.

11:11:33 17 Q. Okay. And I should say on the record,
11:11:38 18 last week, when we originally had scheduled this
11:11:40 19 50-h, your attorney provided me a disc that
11:11:43 20 contained four separate video files. It's my
11:11:47 21 understanding that's what your attorney is in
11:11:49 22 possession of.

11:11:50 23 I'm going to ask -- because it's also my

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11:11:54 1 understanding from prior testimony that video was
11:11:58 2 recorded, I'm just going to ask that that video be
11:12:03 3 preserved and that I have an opportunity to inspect
11:12:07 4 the complete video, if anything else exists other
11:12:11 5 than the four video files that I was already given.

11:12:14 6 A. Okay.

11:12:15 7 Q. And I'll make that request through your
11:12:17 8 attorney.

11:12:17 9 Aside from conversations with your attorney --
11:12:20 10 those, I don't want to know about -- have you
11:12:22 11 discussed this incident with anyone else?

11:12:28 12 A. Friends and family, yes.

11:12:30 13 Q. What friends and family?

11:12:34 14 A. My sisters.

11:12:36 15 Q. What are their names?

11:12:38 16 A. Gwen Cassidy, Gail Malone. I'm going
11:12:57 17 to call him Mr. Gary. I don't know Gary's first
11:13:00 18 name, but he was the one that recovered the video
11:13:03 19 from the DVR. He's an IT guy.

11:13:08 20 Q. Does he work for you?

11:13:09 21 A. He -- in this instance, yes. We gave
11:13:14 22 him \$150 to take the DVR and put it to disc because
11:13:17 23 we didn't know how to do it.

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11:13:19 1 Q. What type of system was this video
11:13:21 2 recorded on?

11:13:22 3 A. A Swann.

11:13:26 4 Q. And forgive me. I don't know what that
11:13:29 5 is. What is it?

11:13:29 6 A. It's a Swann DVR with eight cameras.

11:13:35 7 Q. What location is that video system on?

11:13:38 8 A. It's at 37 Schmarbeck. It covers
11:13:44 9 41 Schmarbeck and 33 Schmarbeck.

11:13:52 10 Q. Are those eight cameras --

11:13:55 11 A. They're spread out all over those
11:13:57 12 buildings.

11:13:57 13 Q. So it covers those three addresses?

11:14:00 14 A. Yeah. Well, actually, it covers 24 as
11:14:04 15 well.

11:14:04 16 Q. Do you own and control that system?

11:14:08 17 A. Rachel Glurich owns the system.

11:14:18 18 Q. And who is Rachel to you?

11:14:20 19 A. We have three children in common.
11:14:23 20 She's my next-door neighbor.

11:14:27 21 Q. Are you currently in a relationship?
11:14:31 22 A. Yes.
11:14:32 23 Q. How long have you been together?

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11:14:37 1 A. 12 years at least. Maybe longer. I'll
11:14:41 2 be in trouble if that's wrong.

11:14:50 3 Q. So is Rachel the one that operates that
11:14:52 4 camera system?

11:14:58 5 A. When you say operates, it kind of
11:15:00 6 operates itself. You just turn it on.

11:15:02 7 Q. Like hit a button and it goes?

11:15:04 8 A. And then if something happens, then you
11:15:06 9 go to the machine and do the best you can to try to
11:15:10 10 say, okay, let me see what just happened down
11:15:13 11 there.

11:15:13 12 Q. Does that system record over itself, or
11:15:15 13 does it preserve the video?

11:15:17 14 A. Yeah, it records over -- it depends on
11:15:19 15 how you set it, but yeah, I'm pretty sure the way
11:15:23 16 we've been able to -- we're not expert IT people,
11:15:25 17 and the way it's been essentially set up is it
11:15:29 18 records over itself.

11:15:30 19 That's why we called Gary, this fellow, the
11:15:33 20 IT guy, and said, come over here and get the DVR
11:15:37 21 and make sure this gets preserved, because we're
11:15:40 22 afraid it's going to record over itself if we don't
11:15:42 23 do it quickly.

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11:15:44 1 Q. Were you able to preserve everything
11:15:44 2 with regard to this incident, in terms of the
11:15:48 3 video?

11:15:48 4 A. Gary asked us: What do you want
11:15:50 5 preserved? And I told him essentially what had
11:15:54 6 happened and said that's what we need. We need
11:15:59 7 any -- any pictures or views that will reveal what
11:16:03 8 happened in the front of the house, that's what we
11:16:06 9 need preserved.

11:16:07 10 So he took what was on the DVR and he made
11:16:11 11 those files on that disc that you got the other
11:16:15 12 day.

11:16:15 13 Q. The four separate files?

11:16:16 14 A. Yeah.

11:16:18 15 Q. And any other video from that day has
11:16:21 16 now since been deleted?

11:16:24 17 A. What Gary did at Gary's house when he
11:16:27 18 got the DVR and he put it into his computer and
11:16:29 19 transferred files, I have no clue if there's still
11:16:32 20 more stuff there.

11:16:36 21 I thought it important that we get the views
11:16:38 22 from the front of the house, so that's essentially
11:16:40 23 what -- what's on the four files.

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11:16:44 1 Q. Did everything with regard to this
11:16:46 2 incident occur in the front of the house?

11:16:53 3 A. Yeah. On the street in the front of
11:16:57 4 the buildings, yeah. There wasn't anything going
11:16:59 5 on in the house, behind the house.

11:17:00 6 Q. Did you ever discuss this incident with
11:17:02 7 Rachel?

11:17:05 8 A. Yeah. Yeah.

11:17:08 9 Q. Did you ever discuss with anyone that
11:17:11 10 you were going to come in and give testimony today
11:17:12 11 with regard to this incident, aside from your
11:17:16 12 attorney, of course?

11:17:18 13 A. Yeah. Several people knew. Rachel
11:17:21 14 knows. My sisters know. My son Earl knows. My --
11:17:25 15 two of my daughters know.

11:17:27 16 Q. And I guess we should put for the
11:17:29 17 record -- indicate that your son, Earl Kistner,
11:17:32 18 is also present for this 50-h.

11:17:35 19 A. Yeah.

11:17:36 20 Q. Okay. How old are you?

11:17:37 21 A. 57.

11:17:38 22 Q. What is your date of birth?

11:17:39 23 A. [REDACTED] 60.

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11:17:42 1 Q. Where were you born?
11:17:44 2 A. Cincinnati, Ohio, Jewish Hospital.
11:17:49 3 Q. Where were you raised?
11:17:51 4 A. Large part in Cincinnati as a child.
11:17:55 5 Q. When did you come to the City of
11:17:59 6 Buffalo?
11:17:59 7 A. I got here in '90. I think it was '90.
11:18:03 8 Q. What brought you here?
11:18:04 9 A. I had a sister that lived here.
11:18:13 10 Q. What is your Social Security number?
11:18:14 11 A. [REDACTED] 5112.
11:18:21 12 Q. Have you ever used any other Social
11:18:23 13 Security number?
11:18:23 14 A. No.
11:18:27 15 Q. What was your approximate height and
11:18:28 16 weight on January 1st, 2017?
11:18:32 17 A. I'm going to say five ten and 210
11:18:37 18 pounds.
11:18:39 19 Q. Are you right- or left-handed?
11:18:41 20 A. Right-handed primarily.
11:18:42 21 Q. Do you wear contacts or glasses?
11:18:47 22 A. I haven't traditionally, but as I get
11:18:49 23 older, I think I might need them. But no, I don't.

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11:18:52 1 Q. Do you have any hearing problems?
11:18:55 2 A. Sometimes. A lot of background noise.
11:19:01 3 Q. Have you ever been diagnosed with
11:19:03 4 anything with regard to those hearing problems?
11:19:05 5 A. No.
11:19:06 6 Q. Ever seen a doctor specifically for
11:19:08 7 those problems?
11:19:11 8 A. Not that I remember, no.
11:19:14 9 Q. What is your middle name?
11:19:15 10 A. Charles.
11:19:18 11 Q. Have you ever been known by any other
11:19:21 12 name other than James Kistner?
11:19:23 13 A. No.
11:19:23 14 Q. Do you have any nicknames?
11:19:25 15 A. No.
11:19:27 16 Q. Are you married?
11:19:29 17 A. No.
11:19:29 18 Q. Have you ever been married?
11:19:31 19 A. Yes. Once.
11:19:33 20 Q. Who was -- who were you married to?
11:19:35 21 A. Danielle Bradley.
11:19:40 22 Q. When did you get divorced?
11:19:46 23 A. I want to say 2000.

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11:19:50 1 Q. Do you have any children?

11:19:50 2 A. Seven.

11:19:54 3 Q. Now I'm going to test you. What are
11:19:55 4 their names and ages?

11:19:59 5 A. Okay. I'll do this chronologically,
11:20:01 6 and I bet I don't get any birth dates right.

11:20:05 7 Laurel Kistner, she's 25. Joelle Kistner,
11:20:14 8 she's 22. Kendall Barber, she's 22 also. Earl
11:20:28 9 Kistner, he's 21. And then E [REDACTED] and F [REDACTED]
11:20:36 10 K [REDACTED], they're twins. They're two and a half.

11:20:43 11 And C [REDACTED] K [REDACTED], he's three and a half.

11:20:51 12 Q. Do any of these children reside with
11:20:53 13 you?

11:20:53 14 A. They live with their mom next door.

11:20:55 15 Q. That would be E [REDACTED], F [REDACTED], and
11:20:59 16 C [REDACTED]?

11:20:59 17 A. Yeah. But I'm there every day. We
11:21:02 18 have an empty lot between our two houses, so
11:21:05 19 there's a place to be.

11:21:14 20 Q. You listed 33 Schmarbeck as your
11:21:17 21 residence. How long have you lived there?

11:21:24 22 A. Four years, five years.

11:21:28 23 Q. What type of residence is that?

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11:21:32 1 A. It's a typical Buffalo, 30-foot wide,
11:21:37 2 90-foot deep lot with a house on it. It's in
11:21:42 3 Polonia.

11:21:42 4 Q. Is it a single- or multi-family unit?

11:21:44 5 A. It's a single, but we always have more
11:21:47 6 than me living there.

11:21:53 7 Q. Do you rent or own that location?

11:21:54 8 A. I own 33.

11:21:58 9 Q. Does anyone live there with you
11:22:00 10 currently?

11:22:01 11 A. Bobby Gleen rents the second floor
11:22:06 12 and --

11:22:07 13 Q. I'm sorry to interrupt. Is that second
11:22:10 14 floor like a separate unit or just --

11:22:11 15 A. Yeah, it's a separate place.

11:22:13 16 Q. So is there more than one unit within
11:22:15 17 33?

11:22:15 18 A. Yeah. And then the Hammers live in the
11:22:24 19 front off the first floor.

11:22:25 20 Q. Hammers, like the tool?

11:22:27 21 A. Eugene and Mary. Eugene and Mary were
11:22:32 22 not there on January 1st. They weren't tenants.
11:22:36 23 And they're supposed to be moving this afternoon,

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11:22:39 1 so I don't know.

11:22:40 2 Q. What about Bobby? Was he a tenant at
11:22:42 3 the time this happened?

11:22:43 4 A. Bobby's been there five years, I think.
11:22:47 5 And Bobby's car was not there. Usually when
11:22:51 6 Bobby's car is there, Bobby's upstairs. But his
11:22:53 7 car wasn't there that day on the 1st, so I don't
11:22:56 8 think Bobby was home that day.

11:22:57 9 Q. Ever talk to Bobby or Eugene and Mary
11:22:59 10 about what happened on the 1st?

11:23:02 11 A. I haven't talked to Eugene and Mary
11:23:04 12 about it at all. I don't know if I've talked to
11:23:10 13 Bobby about it or not.

11:23:12 14 I know the downstairs tenant that was there
11:23:14 15 on the 1st of January, Mike Wolfe, I told Bobby
11:23:21 16 Mike Wolfe moved and told him under the
11:23:25 17 circumstances, but I don't think I really got
11:23:27 18 into the minutia of it.

11:23:29 19 Q. In your actual unit, does anyone reside
11:23:33 20 in that unit with you?

11:23:34 21 A. No.

11:23:37 22 Q. Do you receive rent from Bobby, Eugene,
11:23:41 23 and Mary for these units?

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11:23:44 1 A. Yeah.

11:23:47 2 Q. On January 1st, 2017, did anyone reside
11:23:50 3 in that unit with you?

11:23:52 4 A. No.

11:23:53 5 Q. And when I say, that unit, I mean the
11:23:55 6 one that you live in.

11:23:56 7 A. Yeah. No.

11:24:01 8 Q. Are you currently employed?

11:24:03 9 A. No.

11:24:04 10 Q. What do you do for income?

11:24:13 11 A. You mean how do I get by?

11:24:17 12 Q. How do you support yourself?

11:24:20 13 A. I collect rents, and I pay expenses
11:24:24 14 with those rents, and what meager is left over,
11:24:29 15 I try to keep me off of food stamps.

11:24:32 16 Q. What -- you listed a bunch of addresses
11:24:34 17 at Schmarbeck -- on Schmarbeck. Which ones do you
11:24:38 18 own?

11:24:38 19 A. I own 24, I own 29, and I own 33.

11:24:46 20 Q. Do you correct -- collect rent income
11:24:49 21 from all three of those locations?

11:24:51 22 A. No. 24 is empty, 29 is an empty lot,
11:24:55 23 and 33 is mine.

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11:25:07 1 Do I collect rent elsewhere? Yes. I
11:25:10 2 collect off of one second floor unit that Rachel
11:25:15 3 Glurich owns at 41.

11:25:27 4 From those rents, which could potentially be
11:25:30 5 three if they're full, I pay everything on all six
11:25:35 6 properties. All property taxes, city and county;
11:25:40 7 all water; all sewage rental; all garbage fees; all
11:25:45 8 gas on all units; all electric on all units.

11:25:48 9 And our primary tenants are referrals from
11:25:54 10 mental health agencies. Restoration Society here
11:25:58 11 in Buffalo sends us a lot of tenants. It's like
11:26:03 12 you pay one bill and we take care --

11:26:05 13 MR. OSTROWSKI: Wait for a question.

11:26:07 14 THE WITNESS: -- of the rest.

11:26:10 15 Does that answer the question?

11:26:11 16 MR. OSTROWSKI: I said wait for a question.

11:26:13 17 THE WITNESS: I'm sorry. I'm sorry.

11:26:14 18 BY MS. HUGGINS:

11:26:15 19 Q. No. That's okay.

11:26:16 20 What's your highest level of education?

11:26:18 21 A. I have a master's degree in urban
11:26:22 22 planning from UB. Graduated in 2011.

11:26:29 23 Q. Any other degrees besides that urban

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11:26:33 1 planning master's?

11:26:34 2 A. I've got a BA from UB in sociology and
11:26:40 3 history. A dual major.

11:26:41 4 Q. When did you receive that degree?

11:26:45 5 A. I want to say '08.

11:26:47 6 And an associate's of arts from Niagara
11:26:51 7 County Community College, and I want to say that
11:26:56 8 was '04, '03.

11:26:57 9 I got them in a row. I was in school for
11:26:59 10 nine years.

11:27:00 11 Q. Did you graduate from high school out
11:27:01 12 in Cincinnati?

11:27:03 13 A. No. I got a GED in 1978 in Ohio. I
11:27:08 14 didn't go to high school.

11:27:11 15 Q. Any other training or educational
11:27:14 16 programs aside from the two degrees from UB and the
11:27:17 17 associate's from Niagara Community?

11:27:19 18 A. I went to the American Institute for
11:27:22 19 Paralegal Studies in Cincinnati, Ohio, in 1978,
11:27:27 20 after I got my GED.

11:27:32 21 Q. Do you have a driver's license?

11:27:33 22 A. No. I've never had a driver's license.
11:27:35 23 I've never driven.

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11:27:47 1 Q. I may have asked this before, so I
11:27:49 2 apologize if I have. On January 1st, 2017, were
11:27:52 3 you employed aside from the work you do renting out
11:27:55 4 these apartments?

11:27:56 5 A. No.

11:28:07 6 Q. Do you collect any unemployment or
11:28:10 7 public assistance?

11:28:11 8 A. Not currently.

11:28:14 9 Q. Were you collecting any on January 1st,
11:28:16 10 2017?

11:28:17 11 A. No.

11:28:25 12 Q. Do you have any criminal convictions?

11:28:30 13 A. No crimes of moral turpitude.

11:28:33 14 Q. Do you have any other criminal
11:28:34 15 convictions aside from crimes of moral turpitude?

11:28:39 16 MR. OSTROWSKI: Misdemeanor or felony is a
11:28:42 17 crime.

11:28:42 18 THE WITNESS: Yes.

11:28:43 19 BY MS. HUGGINS:

11:28:44 20 Q. What are your criminal convictions?

11:28:48 21 MR. OSTROWSKI: Can I -- can we have a
11:28:52 22 time frame here? Because I want to go by the rules
11:28:54 23 of evidence. I think it's ten years.

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11:28:56 1 MS. HUGGINS: Do you want to do ten? Does
11:28:59 2 he have -- do you have criminal convictions?

11:29:00 3 MR. OSTROWSKI: I mean, I'm just trying to
11:29:02 4 keep it relevant.

11:29:04 5 THE WITNESS: Do I have any felony
11:29:06 6 conviction within the last decade? No.

11:29:08 7 BY MS. HUGGINS:

11:29:08 8 Q. Do you have any misdemeanor convictions
11:29:09 9 within the last decade?

11:29:11 10 A. I don't think so, no.

11:29:14 11 Q. Could you have any that you don't
11:29:16 12 remember?

11:29:19 13 A. I think if I had them, I'd remember.

11:29:24 14 The question is the ten-year frame. I don't think
11:29:27 15 I have any in the last ten years.

11:29:29 16 MR. OSTROWSKI: Do you want to talk to me
11:29:31 17 outside?

11:29:39 18 THE WITNESS: I think that's it.

11:29:40 19 MR. OSTROWSKI: Let's talk outside.

11:29:41 20 THE WITNESS: All right.

11:30:27 21 (A recess was then taken.)

11:30:27 22 MR. OSTROWSKI: He's going to clarify that
11:30:28 23 last answer.

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11:30:30 1 **THE WITNESS:** I'm hoping to reiterate what I
11:30:33 2 said earlier. No, I don't have any convictions in
11:30:35 3 the last ten years.

11:30:36 4 **BY MS. HUGGINS:**

11:30:36 5 **Q.** Okay. Have you been arrested by the
11:30:37 6 police in the last ten years?

11:30:40 7 **A.** Yes. January 1st.

11:30:41 8 **Q.** Aside from the incident on January 1st,
11:30:44 9 2017, were you -- have you been arrested previous
11:30:49 10 to that?

11:30:53 11 **MR. OSTROWSKI:** In the last ten years?

11:30:55 12 **MS. HUGGINS:** I mean, really, Jim, he's put
11:30:58 13 it at issue by making a claim regarding unlawful
11:31:01 14 arrest and saying that he has emotional damages as
11:31:03 15 a result of it.

11:31:06 16 **MR. OSTROWSKI:** Could we just go off the
11:31:07 17 record?

11:31:08 18 **MS. HUGGINS:** Sure.

11:32:09 19 (Discussion off the record.)

11:32:09 20 **BY MS. HUGGINS:**

11:32:11 21 **Q.** Aside from January 1st, 2017, have you
11:32:14 22 ever been arrested previous to that?

11:32:18 23 **A.** In the last ten years, yes. Once.

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11:32:20 1 Q. When was that?

11:32:23 2 A. I'm thinking it was 2005.

11:32:28 3 Q. Do you recall what town or city that

11:32:31 4 took place in?

11:32:33 5 A. City of Buffalo.

11:32:33 6 Q. Were criminal charges pressed?

11:32:39 7 A. I have to ask to qualify that or to --

11:32:42 8 Q. Did you ever have to go to court for

11:32:44 9 it?

11:32:44 10 A. Yes.

11:32:44 11 Q. Do you know what happened in court

11:32:46 12 regarding that arrest?

11:32:48 13 A. The ultimate outcome of it was it was

11:32:53 14 reduced and an ACD was issued, and it went away on

11:32:58 15 the calendar, I guess.

11:33:02 16 Q. What police department arrested you?

11:33:03 17 A. City of Buffalo.

11:33:07 18 Q. Without going into every detail about

11:33:09 19 what happened, briefly, can you tell me what led up

11:33:11 20 to those charges? What type of arrest was it?

11:33:16 21 A. Oh, it was an arrest at 33 Schmarbeck,

11:33:22 22 and it was a trespass.

11:33:36 23 Q. Was it trespass on your own property?

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11:33:41 1 A. I can't answer that. I don't know how
11:33:42 2 to answer that.

11:33:44 3 Q. What caused the police to get involved?

11:33:49 4 A. Oh, they were summoned there.

11:33:51 5 Q. Do you know who called the police?

11:33:55 6 A. Mr. Calderone is his name.

11:33:58 7 Q. Was that a tenant of yours?

11:34:00 8 A. No, he was not a tenant at 33 Schmarbeck.

11:34:03 9 He was dating my daughter at the time.

11:34:07 10 Q. Did you have any sort of physical
11:34:08 11 altercation with him?

11:34:09 12 A. I think he claimed one.

11:34:17 13 Q. Any other arrests aside from this one
11:34:20 14 in 2005?

11:34:21 15 A. Not in ten years, no.

11:34:22 16 Q. Have you ever been issued a summons or
11:34:24 17 desk appearance ticket by the police department?

11:34:26 18 A. On January 1st, the instant matter.

11:34:31 19 Q. Were you given a desk appearance
11:34:35 20 ticket?

11:34:35 21 Do you know what it was exactly that you
11:34:37 22 were given?

11:34:38 23 A. It was an appearance ticket, but I

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11:34:41 1 wasn't released.

11:34:44 2 Q. Do you have any prior bankruptcies?

11:34:46 3 A. No. I've never filed bankruptcy.

11:34:49 4 Q. Any military service?

11:34:51 5 A. None.

11:34:53 6 Q. Do you recall what day of the week

11:34:54 7 January 1st, 2017 was?

11:34:57 8 A. No.

11:34:59 9 Q. Do you recall what time you woke up
11:35:01 10 that day?

11:35:05 11 A. About 8 o'clock, 9 o'clock.

11:35:06 12 Q. Where were you when you woke up that
11:35:07 13 day?

11:35:08 14 A. 33 Schmarbeck. I was in the shop,
11:35:12 15 sleeping in a chair.

11:35:17 16 Q. What time did this incident that we're
11:35:19 17 here to talk about today occur?

11:35:20 18 A. It was about -- I'm going to say
11:35:23 19 between 10 o'clock in the morning and 11.

11:35:25 20 Q. Did you consume any drugs or alcohol
11:35:27 21 within the 24 hours leading up to that --

11:35:30 22 A. No.

11:35:31 23 Q. -- incident?

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11:35:31 1 A. No.

11:35:36 2 Q. Did you have breakfast --

11:35:39 3 A. Yeah.

11:35:39 4 Q. -- on January 1st?

11:35:40 5 A. Yeah.

11:35:41 6 Q. Do you recall what you had for

11:35:42 7 breakfast?

11:35:43 8 A. Some kind of eggs. Just regular fare.

11:35:46 9 Eggs and bacon or something.

11:35:49 10 Q. Did you skip taking any medication that

11:35:51 11 you should have been taking on that day?

11:35:53 12 A. No. I don't take any medication at

11:36:00 13 all.

11:36:00 14 Q. And I said drugs and alcohol. Did you

11:36:02 15 take any prescription or other type of like

11:36:07 16 nonillegal drugs that day?

11:36:08 17 A. No. I don't take any drugs, legal or

11:36:10 18 illegal. I haven't drank since 1999.

11:36:20 19 Q. Well, what happened during this

11:36:21 20 incident?

11:36:23 21 A. Should I give a narrative?

11:36:28 22 Q. Yeah. I wasn't there. That's why I'm

11:36:30 23 asking you.

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11:36:31 1 A. Okay. All right. I'll give a narrative.
11:36:33 2 We're upstairs eating. Earl was there. We
11:36:37 3 were in Rachel's kitchen on the second floor. And
11:36:41 4 we had the three boys in highchairs, and we were
11:36:44 5 all eating.

11:36:45 6 And I can't remember whether it was Earl or
11:36:48 7 Rachel or me or somebody said, Mike's driving. And
11:36:54 8 I looked outside, and Mike Wolfe, the tenant in the
11:37:01 9 first floor at 33, had pulled up in a red van.

11:37:08 10 And I said, are you sure -- whoever it was,
11:37:11 11 I said, are you sure that's Mike who was driving?
11:37:14 12 And they said, yeah. And I said, well, Mike ain't
11:37:18 13 got a driver's license, and he don't own a van. So
11:37:20 14 Mike's driving that van?

11:37:21 15 Q. How do you know he doesn't have a
11:37:23 16 driver's license?

11:37:23 17 A. Because I had spoken to him probably
11:37:26 18 three or four weeks previous to this about him
11:37:30 19 cashing checks. He needed a place to cash checks.
11:37:33 20 I said, well, don't you have ID or a driver's
11:37:36 21 license or something? And he says, no.
11:37:37 22 He explained to me he didn't have a driver's
11:37:40 23 license.

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11:37:40 1 Q. Okay. Had you ever seen that red van
11:37:42 2 before?

11:37:42 3 A. No.

11:37:45 4 Q. What happened after you saw the van
11:37:47 5 pull up?

11:37:47 6 A. Well, first, I was concerned because
11:37:54 7 he -- it was recently he had been staying at -- I
11:38:04 8 want to say the Brothers of the Poor. It was a
11:38:10 9 social service agency. He had stayed there from
11:38:12 10 the 18th of December through about the 27th.

11:38:17 11 And when I found out about it, I contacted
11:38:20 12 them, and I said, why is he staying with you? He's
11:38:24 13 got a subsidized apartment at 33 Schmarbeck. They
11:38:28 14 didn't know.

11:38:29 15 Q. How did you come to know he was staying
11:38:30 16 there?

11:38:32 17 A. He wasn't staying at 33. I've lived
11:38:40 18 there for a decade. I can pretty well know when
11:38:43 19 somebody's not there. And I inquired. I asked
11:38:46 20 people. I said, where is Mike? They said, well, I
11:38:50 21 think he's over at the Little Brothers of the Poor
11:38:51 22 Friary or wherever he's at. I said, what's he
11:38:54 23 doing there?

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11:38:54 1 So I called them. They said, yeah. He's
11:38:57 2 been here for ten days claiming he's homeless. So
11:39:00 3 then I called the people that subsidize his rent,
11:39:02 4 the Restoration. They said, we need to all get on
11:39:06 5 the same page here.

11:39:06 6 Q. Did you ever have any disputes with
11:39:08 7 Mike about where he was living?

11:39:10 8 A. The only problem I ever had with Mike
11:39:13 9 was that he had -- he brought somebody else into
11:39:16 10 the apartment, and under the terms of, you know,
11:39:19 11 his tenancy there, it's not that kind of movie.
11:39:22 12 It's for him. If he wants somebody else to come
11:39:25 13 in, we need to have an application filled out from
11:39:28 14 them.

11:39:29 15 Q. Like was he subletting it and getting a
11:39:31 16 rent from it or just allowing someone to stay
11:39:33 17 there?

11:39:34 18 A. I don't know that deep of minutia. If
11:39:38 19 he was using it as a resource and trying to profit
11:39:40 20 from it, I don't know.

11:39:46 21 But it had been growing and growing and
11:39:49 22 growing out of hand, Mike's tenancy there, so we
11:39:53 23 had given him a 30-day notice on December 30th,

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11:39:58 1 after we had found out that he wasn't in the unit
11:40:02 2 and that he was staying over at the social service
11:40:04 3 agency and making these claims.

11:40:08 4 Q. Did that create any issues -- this
11:40:09 5 30-day notice create any issues between you and
11:40:11 6 Mike?

11:40:14 7 A. Nah, because we had talked, and I told
11:40:17 8 him: You know, you can't really do this here, you
11:40:20 9 know.

11:40:22 10 Q. All right. So what happened on
11:40:23 11 January 1st, when you saw that van?

11:40:26 12 A. I said, oh, well, I hope he doesn't
11:40:28 13 steal the appliances. Because we also furnish all
11:40:31 14 the appliances. The washer, the dryer the stove,
11:40:33 15 and the fringe. I said, just keep an eye on him,
11:40:36 16 and, you know, if he starts loading stuff into the
11:40:38 17 appliances -- he starts loading the appliances,
11:40:40 18 I'll call the cops.

11:40:41 19 Q. Who did you say that to?

11:40:43 20 A. I think Earl and Rachel.

11:40:44 21 Q. Okay. Did you have plans on January 1st?
11:40:49 22 Were you going to be home that day?

11:40:54 23 A. Yeah. No. I don't think we were going

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11:40:57 1 anywhere. I was just happy to have all the boys
11:41:02 2 home at once.

11:41:03 3 Q. What happened next?

11:41:05 4 A. I can't tell you how much time elapsed,
11:41:08 5 but I think it was less than a half hour,
11:41:11 6 a policeman pulled up right in front of
11:41:13 7 33 Schmarbeck.

11:41:14 8 Q. Did you ever call the police?

11:41:16 9 A. No. Well --

11:41:18 10 Q. Do you have an idea who called the
11:41:19 11 police?

11:41:21 12 A. I suspect Mike called the police. Mike
11:41:27 13 Wolfe.

11:41:27 14 Q. On January 1st, was Mike Wolfe still
11:41:30 15 permitted to be in that first floor unit?

11:41:34 16 A. You mean had he been evicted or locked
11:41:37 17 out? No.

11:41:37 18 Q. Right.

11:41:38 19 A. He hadn't been evicted. He hadn't been
11:41:40 20 locked out.

11:41:41 21 Q. Okay. What type of -- and I'm sorry.
11:41:48 22 I might have just -- you might have just said this.
11:41:51 23 When the police got there, how many police officers

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11:41:53 1 were there?

11:41:57 2 A. I think you have -- one of those video
11:42:00 3 files has that, their arrival.

11:42:04 4 The first police car I saw was in the center
11:42:06 5 of the street. That was the first one that
11:42:08 6 arrived. I looked at the video, so I know the
11:42:10 7 order in which they got there.

11:42:13 8 In the video you see the first policeman
11:42:15 9 pull up. He pulls up in the middle of the street.
11:42:18 10 And there were two men in that car.

11:42:22 11 Q. How were they dressed?

11:42:25 12 A. Like policemen.

11:42:27 13 Q. Were they wearing a uniform?

11:42:28 14 A. Yeah. Yeah.

11:42:31 15 Q. Without watching the video, did you --
11:42:35 16 did you see these things yourself that day?

11:42:37 17 A. When -- when it was brought to my
11:42:40 18 attention, I don't know if it was Rachel or I might
11:42:42 19 have looked out the window and seen it myself,
11:42:44 20 but: The police are here.

11:42:46 21 So I looked outside, and the first thing I
11:42:49 22 thought when I saw the police were here is: Well,
11:42:53 23 Mike's got a stolen car. The red van is stolen.

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11:43:00 1 Or he's been out driving recklessly with a borrowed
11:43:02 2 car and they've just found him. That was the first
11:43:06 3 thing I thought.

11:43:07 4 Q. What happened next?

11:43:12 5 A. The policeman in the driver's seat of
11:43:15 6 the car in the street got out of his car and he
11:43:18 7 walked over, and he got four feet away from Mike
11:43:22 8 and he talked to him. I don't know what they were
11:43:24 9 saying back and forth, but they had a conversation
11:43:28 10 for probably two minutes.

11:43:31 11 Q. Were you inside the house still at that
11:43:33 12 point?

11:43:33 13 A. Yeah. I was on the second floor
11:43:35 14 looking out the window watching. I was 60 feet
11:43:37 15 away watching.

11:43:38 16 Q. Okay. What happened next?

11:43:40 17 A. Either Earl or Rachel said: What's
11:43:44 18 going on down there? And I said, well, I don't
11:43:47 19 know, but I'm finishing breakfast before I go down
11:43:49 20 there to find out.

11:43:50 21 I'm not going to go rushing down there
11:43:52 22 because they might be arresting him. And I'm just
11:43:56 23 going to stand here for a minute and watch what

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11:43:59 1 happens.

11:44:00 2 So Mike was pointing up -- as he was talking
11:44:04 3 to the policeman, was pointing up at the window
11:44:07 4 where Rachel, me, and Earl were with the three kids
11:44:11 5 in the kitchen watching this whole thing.

11:44:13 6 Q. What happened next?

11:44:23 7 A. The policeman walks back over and
11:44:27 8 starts talking to the policeman who's still in the
11:44:30 9 car in the passenger seat. I don't know what was
11:44:36 10 said, but they were talking back and forth through
11:44:38 11 the window.

11:44:39 12 About that time another police car pulled up
11:44:45 13 along the curb between the police car in the street
11:44:53 14 and the curb, in a parking spot there, behind this
11:44:56 15 red van that Mike had pulled up in.

11:45:00 16 Q. Did there come a time when you left
11:45:02 17 your house? Exited your house?

11:45:05 18 A. Yeah. About this time when all these
11:45:07 19 police cars were arriving, I said to Rachel or
11:45:10 20 Earl, I said, we've got to go down there and find
11:45:12 21 out what's going on.

11:45:15 22 So we finished breakfast, and then I asked
11:45:19 23 Earl to come down with me. I said, let's go find

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11:45:22 1 out what's going on.

11:45:25 2 Q. What happened when you went outside?

11:45:27 3 A. I walked out of the house, down the
11:45:38 4 steps, out in the street, crossed the path of the
11:45:44 5 police car that was in the front -- that was in the
11:45:47 6 middle of the street, and went around like to his
11:45:49 7 driver's door to talk to the driver who had been
11:45:55 8 speaking to Mike.

11:45:56 9 There was a secondary thing here too as well
11:45:59 10 as maybe it's a stolen car. Mike's a mental health
11:46:03 11 patient, so he could have been in crisis. There
11:46:05 12 was no telling what was going on with him. So --
11:46:08 13 and when that happens, you've got to go find out.

11:46:12 14 Q. So when you walked up by the police in
11:46:15 15 front of the car, did you say anything or identify
11:46:18 16 yourself at all to the police?

11:46:20 17 A. Yeah. As I was walking toward the
11:46:21 18 police car off to the right, I said, I need to talk
11:46:27 19 to you. Can I talk to you?

11:46:29 20 Q. Did the police respond at all?

11:46:32 21 A. The officer who was in the passenger
11:46:35 22 side started yelling.

11:46:38 23 Q. From which police car?

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11:46:40 1 A. The one that was in the middle of the
11:46:41 2 street.

11:46:42 3 Q. Okay. What did they yell?

11:46:47 4 A. He started yelling: I'm not talking to
11:46:49 5 anybody. I'm not talking to anybody. Let's get
11:46:52 6 out of here. Let's get out of here.

11:46:54 7 He started telling the guy that was driving:
11:46:57 8 We've got to leave. We're leaving now. We're
11:46:59 9 leaving now. He said, I'm not talking to anybody.
11:47:02 10 Let's go. Let's go.

11:47:04 11 And he started yelling at the guy that was
11:47:05 12 driving the car to let's go.

11:47:08 13 Q. How close were you to the car at that
11:47:19 14 point?

11:47:19 15 A. Honest to God, I can't remember
11:47:22 16 specifically. I know I was within 30 feet.

11:47:27 17 Q. Sure. Do you know, were you in front
11:47:29 18 of the car or on the side of the car?

11:47:30 19 A. When he started yelling, I was in front
11:47:32 20 of the car to the side.

11:47:35 21 Q. Would that have been to the right or
11:47:38 22 left side of the car?

11:47:39 23 A. It would have been the driver's side.

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11:47:40 1 I was off to the driver's side.

11:47:41 2 Q. Okay. So you're standing there I
11:47:44 3 presume facing the car?

11:47:45 4 A. Yeah.

11:47:46 5 Q. Were you walking towards the car still
11:47:48 6 at that point?

11:47:49 7 A. Yeah.

11:47:50 8 Q. What happened next?

11:47:54 9 A. The driver floored it, so I got out of
11:47:59 10 the way and watched him drive by me. And the two
11:48:03 11 women who were still in the police car by the
11:48:06 12 curb --

11:48:06 13 Q. The one behind the red van?

11:48:08 14 A. Yeah. I looked over at them, and I
11:48:11 15 said, can I talk to you?

11:48:13 16 Q. Did they respond?

11:48:15 17 A. She smiled at me.

11:48:18 18 Q. Who's she?

11:48:19 19 A. The driver.

11:48:20 20 Q. What did she look like?

11:48:24 21 A. You. I'm telling the truth. She
11:48:29 22 looked just like you.

11:48:30 23 Q. Did you ever come to learn her name?

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11:48:33 1 A. I have to be quite frank, I can't put
11:48:36 2 their names with their faces.

11:48:38 3 Q. Okay. Did you ever come to learn the
11:48:42 4 names of the police officers that were involved
11:48:43 5 that day?

11:48:45 6 A. Later on, from the criminal charging
11:48:49 7 documents, I was able to find out who four of them
11:48:52 8 were.

11:48:53 9 Q. How many police officers were there
11:48:55 10 then total?

11:48:56 11 A. There were -- there were five
11:48:59 12 altogether. One didn't arrive until later.

11:49:07 13 Q. When this happened, the interaction you
11:49:09 14 had with the first car pulling away and then the
11:49:12 15 second one with the two females in it, there's a
11:49:15 16 total of four officers there at that point?

11:49:17 17 A. Yeah, there's four people there then.

11:49:19 18 Q. And you said there was -- I apologize
11:49:21 19 if you said this before -- there were two males and
11:49:23 20 two females?

11:49:25 21 A. Yeah. The first two were guys and the
11:49:26 22 second two were girls.

11:49:28 23 Q. Did they ever identify themselves to

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11:49:31 1 you at all?

11:49:31 2 A. No. I don't think anybody said, my
11:49:33 3 name is Officer -- no, nobody ever did that. I
11:49:36 4 know nobody ever did that.

11:49:36 5 Q. Okay. After that female police officer
11:49:39 6 who was in the driver's seat smiled at you, what
11:49:42 7 happened next?

11:49:43 8 A. I said, can I talk to you? And she
11:49:46 9 looked over and smiled at me. I took two steps
11:49:50 10 toward the car, was crossing that lane of traffic
11:49:54 11 where the officer had just driven away, I was
11:49:58 12 crossing that, and when I looked up, the car was
11:50:00 13 coming at me.

11:50:03 14 Q. Did you move to get out of the way?

11:50:06 15 A. I put up my arms, and I closed my eyes,
11:50:10 16 and boom, it hit me.

11:50:14 17 Q. How long did that take?

11:50:16 18 What was the period of time between that
11:50:18 19 female driver looking at you and smiling and to you
11:50:21 20 getting hit?

11:50:23 21 A. The time it took me to cross that lane
11:50:25 22 of traffic. Three to five seconds, I guess.

11:50:28 23 Q. Why did you walk towards the car?

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11:50:30 1 A. Because I thought she was going to talk
11:50:32 2 to me.

11:50:32 3 Q. Did she roll down her window?

11:50:35 4 A. No, but she acknowledged me, and I know
11:50:39 5 she heard me when I said, can I talk to you? And
11:50:42 6 she looked and went -- she smiled. I know that
11:50:45 7 won't go into the transcript, but she smiled, and I
11:50:48 8 took it as an acknowledgement that she was going to
11:50:50 9 talk to me.

11:50:51 10 Q. That somehow she was going to engage in
11:50:53 11 some sort of conversation with you?

11:50:54 12 A. Yeah. She was going to tell me why
11:50:56 13 they were there or what had gone on or what their
11:50:59 14 concern was at being at --

11:51:01 15 Q. Did she say anything verbally to you?

11:51:05 16 A. Not before she hit me.

11:51:07 17 Q. What happened after you were struck?

11:51:13 18 Actually, let me ask you this: Where were
11:51:15 19 you struck on your body?

11:51:20 20 A. I think primarily my hands, because I
11:51:24 21 put my arms out. I'm not sure if my torso or my
11:51:33 22 legs ever came in contact with that car, but I --

11:51:37 23 Q. Did you try to stop the car from

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11:51:39 1 moving?

11:51:39 2 A. No. I tried to like just -- that's
11:51:41 3 what I did. I just put my hands up and said, oh,
11:51:44 4 Christ. In my head I said, oh, Christ. I'm going
11:51:47 5 to get hit by a car.

11:51:49 6 Q. Yeah. The record should reflect you've
11:51:52 7 raised both of your hands with your palms and
11:51:53 8 fingers spread out --

11:51:55 9 A. Yes.

11:51:55 10 Q. -- in front of you.

11:51:57 11 What happened after you were struck?

11:52:05 12 A. I remember opening my eyes and being on
11:52:10 13 my back on the ground. I remember looking down at
11:52:16 14 my feet, and my feet were between the back wheels
11:52:20 15 and the front wheels of her patrol car.

11:52:27 16 Q. Under her car?

11:52:27 17 A. Yes, my feet were under her car. How
11:52:31 18 deep under her car, I don't know.

11:52:33 19 Q. What type of car was this?

11:52:41 20 A. It wasn't like a car. It was more like
11:52:44 21 an SUV.

11:52:48 22 Q. Did it have any police markings on it?

11:52:50 23 A. Yeah. It was all marked. Yeah. They

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11:52:54 1 mark them historically so if you need one, you can
11:52:56 2 walk up and you know who to talk to.

11:52:58 3 Q. What happened when you opened your eyes
11:53:00 4 and you were on the ground?

11:53:01 5 A. The first thing I thought of is:

11:53:05 6 She's going to run over my legs. And I got out --
11:53:08 7 like tried to roll on my side to get out from
11:53:11 8 underneath the police car.

11:53:13 9 I'm still on the -- I'm flat on my back, but
11:53:16 10 I'm I don't know why I want to say cartwheeling,
11:53:19 11 trying to just crawl out from underneath the car,
11:53:21 12 because I was afraid she was going to run over my
11:53:23 13 legs.

11:53:23 14 Q. Were you bleeding at all?

11:53:24 15 A. Not that I remember.

11:53:26 16 Q. Did you say anything?

11:53:28 17 A. Yeah. I yelled for Earl. I thought
11:53:32 18 Earl was right behind me. I thought Earl was like,
11:53:35 19 you know, four feet away, and I yelled for Earl.

11:53:38 20 Q. What did you say?

11:53:39 21 A. Earl, call an ambulance. She done run
11:53:41 22 me over.

11:53:41 23 Q. Were you swearing?

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11:53:52 1 A. I'm not sure.

11:53:53 2 Q. Did you say anything to the police?

11:54:01 3 A. No. I just yelled for Earl initially.

11:54:06 4 Q. Did the police stop?

11:54:13 5 A. It seemed like a while -- I'm trying to

11:54:16 6 continue the narrative. So we get to that point.

11:54:18 7 It seemed like a while, but Earl said, Dad. I

11:54:21 8 said, yeah, call an ambulance. And I -- I think

11:54:32 9 he -- I think he left. I'm not sure, but I told

11:54:35 10 Earl to call an ambulance.

11:54:37 11 And when I started to get up -- when I

11:54:39 12 started to get up off the ground, at that point I'm

11:54:42 13 looking not at the police car anymore. I'm looking

11:54:45 14 straight down Schmarbeck toward Schlenker, and

11:54:50 15 there's a police car down there at the stop sign.

11:54:52 16 That was the first police car that had left.

11:54:54 17 They went down as far as the stop sign at Schlenker

11:54:58 18 and stopped and that's what I saw when I looked

11:55:00 19 down the street.

11:55:01 20 But as I was getting up and I saw that, I

11:55:03 21 felt a pain in the back of my head, and I said, oh,

11:55:09 22 and that's when I went back down. I said, I'm not

11:55:12 23 moving. There's something wrong.

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11:55:13 1 Q. So you laid back down on the ground?
11:55:15 2 A. Yeah. I didn't get up off the ground.
11:55:17 3 I just kind of leaned forward a little bit and
11:55:19 4 that's when it hit me and went, boom. And I went:
11:55:23 5 Uh-oh. Never mind. I'm not getting up. I'm just
11:55:26 6 going to lay here.

11:55:27 7 Q. So was it in the same spot on the road?

11:55:30 8 A. Yes.

11:55:30 9 Q. What happened next?

11:55:33 10 A. Just laid there and yelled until Earl
11:55:36 11 came, and then Earl said, okay. Okay. And I don't
11:55:39 12 know if he left. The video shows that he left, but
11:55:42 13 I didn't know that at the time.

11:55:44 14 I thought he was still standing with me, and
11:55:47 15 I just tried to lay there on the ground and not
11:55:49 16 move around a lot and figure out what was going on.

11:55:51 17 Q. And did the police come over at all?

11:55:55 18 A. The first communication I remember
11:55:57 19 having with the police, after I hit the ground, was
11:56:01 20 the girl that was driving looking down at me
11:56:05 21 standing on her hips -- standing there with her
11:56:08 22 hands on her hips saying, if you don't get up off
11:56:10 23 the ground, I'm going to arrest you.

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11:56:14 1 Q. Okay. Did you say anything back to
11:56:15 2 her?

11:56:20 3 A. I don't remember.

11:56:29 4 Q. Did you ever yell at the police that
11:56:30 5 day?

11:56:36 6 A. Not unjustly.

11:56:37 7 Q. What did you yell at the police?

11:56:39 8 A. Well, we had some choice conversation
11:56:41 9 when they got me to ECMC.

11:56:43 10 Q. Let's just stay with in front of
11:56:45 11 Schmarbeck right now.

11:56:46 12 A. I didn't -- I can't remember yelling at
11:56:48 13 the police. I was more concerned with where Earl
11:56:50 14 was and getting to the hospital, getting to a
11:56:53 15 doctor.

11:56:53 16 Q. Yeah. Aside from that pain to the back
11:56:56 17 of your head, any other injuries that you noticed
11:56:57 18 while you were --

11:56:58 19 A. Laying on the ground?

11:57:00 20 Q. Sure.

11:57:01 21 A. No. That was my biggest complaint.

11:57:03 22 Q. Any broken bones or anything that you
11:57:05 23 could visibly see while you were there in front of

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11:57:11 1 Schmarbeck?

11:57:12 2 A. No.

11:57:20 3 Q. What was the weather like that day?

11:57:20 4 A. It was January 1st in Buffalo. I want
11:57:26 5 to say it was kind of clear. I don't think it was
11:57:28 6 like snowy or anything.

11:57:29 7 Q. Did you have a jacket on when you went
11:57:31 8 outside?

11:57:37 9 A. I think I had a North Face jacket on
11:57:39 10 maybe.

11:57:39 11 Q. Do you remember what you were wearing
11:57:41 12 for shoes?

11:57:43 13 A. Yeah. Kenneth Cole.

11:57:48 14 Q. Were they boots or dress shoes?

11:57:51 15 A. No. They were dress shoes.

11:57:54 16 Q. Is it possible that you slipped on any
11:57:56 17 ice that day?

11:57:59 18 A. There was no ice in the street.

11:58:16 19 Q. Did you -- were you able to like see
11:58:18 20 that SUV after the accident?

11:58:24 21 A. You mean the one that hit me?

11:58:26 22 Q. Yes.

11:58:31 23 A. Once I hit the ground and my head, I

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11:58:36 1 wasn't paying too much attention to nothing.

11:58:38 2 Q. So you wouldn't know if there was
11:58:40 3 damage or not to that vehicle?

11:58:46 4 A. I don't see how there could have been.

11:58:49 5 Q. Do you know if there was?

11:58:53 6 A. I don't think there was, no.

11:58:54 7 Q. Did your clothes get damaged or torn up
11:58:57 8 in any way from the accident?

11:59:06 9 A. No, I don't think so.

11:59:06 10 Q. What happened after that officer said,
11:59:11 11 if you don't get up, you're going to get arrested?

11:59:19 12 A. I know what I've learned from the
11:59:24 13 video, which is the two male officers that were
11:59:27 14 down at the stop sign backed up the street, stopped
11:59:31 15 in front of 37, and got out of their car. Then
11:59:35 16 they --

11:59:36 17 Q. Do you have any independent recollection
11:59:37 18 of that?

11:59:37 19 A. No. I just laid on the ground with my
11:59:39 20 eyes closed and my head hurt.

11:59:41 21 Q. Okay. What's the next recollection you
11:59:44 22 have aside from what you know from viewing the
11:59:46 23 video?

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11:59:48 1 A. 38 seconds after I got hit by the car,
11:59:50 2 the two male officers picked me up, and with the
11:59:54 3 assistance of the one female officer that had hit
11:59:57 4 me, put me in handcuffs and pushed me down the
12:00:02 5 street to 37 with my hands behind me and put me in
12:00:08 6 a patrol car.

12:00:08 7 Q. What kind of handcuffs were they? Were
12:00:12 8 they metal or plastic?

12:00:12 9 A. They were behind me. I didn't see
12:00:14 10 them. But they weren't plastic zip ties. They
12:00:17 11 were metal of some kind.

12:00:19 12 Q. Were you ever informed that you were
12:00:20 13 being arrested?

12:00:25 14 A. You mean did any of the three police
12:00:27 15 officers who put their hands on me say, you're
12:00:30 16 under arrest?

12:00:31 17 Q. Did they ever say that?

12:00:39 18 A. I don't recall if any officer ever said
12:00:41 19 that to me at any time on January 1st.

12:00:47 20 Q. Are you aware that -- if anyone called
12:00:50 21 the police to complain about you or would -- made a
12:00:55 22 report that would cause you to be arrested?

12:01:00 23 A. Not on January 1st, no.

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12:01:04 1 Q. Did the police say anything to you when
12:01:06 2 they were picking you up and putting you in
12:01:09 3 handcuffs?

12:01:10 4 A. Yeah.

12:01:10 5 Q. What did they say?

12:01:11 6 A. You're going to jail.

12:01:14 7 Q. Did you say anything back to that?

12:01:18 8 A. Not at that point.

12:01:19 9 Q. Had you said anything while they were
12:01:23 10 picking you up?

12:01:24 11 A. Not that I recall. It didn't happen --
12:01:29 12 it happened so fast, it didn't give me a whole lot
12:01:33 13 of time to think.

12:01:35 14 Q. What happened -- how did the police
12:01:38 15 officers pick you up?

12:01:46 16 A. I'm pretty sure they rolled me over
12:01:49 17 because I was laying on my back. I'm pretty sure
12:01:51 18 they rolled me over.

12:01:52 19 Q. Do you have a recollection of that, or
12:01:53 20 are you just saying that from the video?

12:01:55 21 A. No. From my viewing of the video, you
12:01:57 22 can't see this. There's a car between the camera
12:02:02 23 and me laying on the ground. But I remember

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12:02:10 1 getting hoisted up off the ground. That's the best
12:02:13 2 way I can describe that.

12:02:15 3 It's like roll you over, put the handcuffs
12:02:18 4 on, and then grab you by the handcuffs by the
12:02:21 5 wrists, and lift you up.

12:02:23 6 Q. Did they lift you to your feet or carry
12:02:25 7 you?

12:02:26 8 A. They lifted me to my feet and then they
12:02:28 9 started pushing me down the street, like if you
12:02:31 10 don't walk, you're going to fall on your face now.

12:02:33 11 Q. Were you able to walk?

12:02:37 12 A. Yeah.

12:02:38 13 Q. And they took you to another police --
12:02:42 14 that other -- that first police car?

12:02:44 15 A. Yeah. They took me to where the two
12:02:46 16 males had parked their police car in front of 37.

12:02:49 17 Q. Were you saying anything to the police
12:02:51 18 during that walk?

12:02:51 19 A. No, not at all.

12:03:04 20 Q. Once you were put in that police car,
12:03:11 21 what happened next?

12:03:11 22 A. The time in the back of the police
12:03:14 23 car -- the time frames in between things happening

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12:03:17 1 back there, I still can't figure that out.

12:03:22 2 I know what happened when I was in the back
12:03:24 3 of the police car, but I don't know if it was two
12:03:26 4 minutes after I got in the back of the police car
12:03:28 5 or 12 minutes after I got in the back of the police
12:03:30 6 car.

12:03:31 7 But I can tell you I got -- I got put in the
12:03:36 8 passenger side, and about -- I want to guess about
12:03:41 9 three minutes after I was in the car, one of the
12:03:50 10 two male officers stuck his head in the window.

12:03:53 11 Q. The front or the back windows?

12:03:55 12 A. The passenger -- the passenger front.

12:03:57 13 Like he was getting in to where his computer was.

12:04:01 14 And he said, you're going to jail. And I said, for
12:04:07 15 what? And he said, fraud.

12:04:10 16 Q. Did you ask him what he meant by that?

12:04:16 17 A. No.

12:04:19 18 Q. Did you say anything back to him?

12:04:21 19 A. No.

12:04:23 20 Q. So you were silent during this whole
12:04:25 21 period of time?

12:04:25 22 A. Yeah. I was all lawyered up when I hit
12:04:27 23 the ground.

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12:04:29 1 Q. Like you told them you have a lawyer
12:04:31 2 and you didn't want to speak to them?

12:04:32 3 A. No. I -- that was facetious of me.
12:04:37 4 No. The whole thing, getting arrested after
12:04:40 5 getting hit by a police car, seemed absolutely
12:04:43 6 ludicrous to me, and I didn't want to entertain
12:04:48 7 this nut.

12:04:48 8 Q. All right. What -- what -- did you
12:04:50 9 ever give the police any ID or identify yourself to
12:04:53 10 them? Did they ever ask for that?

12:05:05 11 A. No. I can tell you how they knew who I
12:05:10 12 was.

12:05:10 13 When they were putting me in the back of
12:05:12 14 that police car, they quickly patted me down, and
12:05:16 15 the only thing that I had brought out of the house
12:05:19 16 with me in my pockets, I'm pretty sure, was a cell
12:05:23 17 phone and the 30-day notice that we had given Mike
12:05:28 18 on the 30th, in case anybody wanted to know what
12:05:30 19 was going on, because I'm still worried that he's
12:05:33 20 trying to boost the appliances or he needs Crisis
12:05:39 21 Services or something.

12:05:40 22 Q. Okay. So at this point did you know
12:05:43 23 where Earl was?

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12:05:45 1 A. I thought Earl was with me the whole
12:05:48 2 time. I didn't -- I didn't know Earl had left to
12:05:53 3 get his phone and come back until after I saw the
12:05:56 4 video later on.

12:05:57 5 Q. Okay.

12:05:58 6 A. I thought that when I was in the police
12:06:00 7 car, I kind of looked out of the police car to my
12:06:03 8 right toward 37 and I saw Earl there.

12:06:07 9 Q. Were you laying in the back of the
12:06:09 10 police car or were you seated?

12:06:13 11 A. Both. At one point after -- after they
12:06:21 12 rousted Earl -- I'm going to use that term -- after
12:06:23 13 they --

12:06:24 14 Q. What do you mean by rousted?

12:06:27 15 A. Abused him.

12:06:29 16 Q. Did you see that happen?

12:06:32 17 A. Most of it.

12:06:33 18 Q. What did you see happen?

12:06:38 19 A. I saw them drag him out in the street.
12:06:41 20 The two of them pushing back and forth, and the
12:06:44 21 four of them essentially ganged up on him and
12:06:46 22 started barking at him.

12:06:47 23 Q. Could you hear what was being said?

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12:06:53 1 A. Parts of it.

12:06:54 2 Q. What did you hear?

12:07:02 3 A. I heard him tell him to turn off the
12:07:04 4 phone, and I heard him -- I'm pretty sure it was
12:07:12 5 the officer that was in the passenger side of the
12:07:15 6 police car again, he made remarks like: You'll be
12:07:24 7 lucky to get it back at all. Or something like
12:07:27 8 that.

12:07:27 9 Q. Was this the same police officer
12:07:28 10 talking the entire time?

12:07:33 11 A. Not when they were abusing Earl in the
12:07:36 12 street. There was the two male officers did most
12:07:40 13 of that, and the female officer, she just kind of
12:07:42 14 sat there like a dog being protected.

12:07:45 15 MR. OSTROWSKI: I hate to interrupt. I've
12:07:47 16 got to take a parking meter break.

12:07:50 17 MS. HUGGINS: Sure.

12:07:50 18 MR. OSTROWSKI: Ten minutes?

12:07:51 19 MS. HUGGINS: Yeah. That's fine.

12:07:52 20 Absolutely.

12:23:48 21 (A recess was then taken.)

12:23:48 22 BY MS. HUGGINS:

12:23:48 23 Q. Did you say anything while the police

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12:23:50 1 were interacting with Earl?

12:24:00 2 A. To intervene, no.

12:24:02 3 I did shout from the police car at one point
12:24:07 4 while I was in it. While I was sitting there in
12:24:12 5 the police car, yeah, I did shout once.

12:24:13 6 Q. What did you shout?

12:24:16 7 A. Rachel was in the window in the second
12:24:19 8 floor in the front watching all this, and she said,
12:24:22 9 Jimmy, what do I do?

12:24:24 10 Q. She shouted from the window?

12:24:26 11 A. Yeah. And I said, call Ostrowski and
12:24:36 12 Dom. Dominic Saraceno's another lawyer. I said,
12:24:40 13 call the lawyers.

12:24:41 14 That's what I yelled up at her.

12:24:44 15 Q. Was Mr. Ostrowski already a lawyer you
12:24:47 16 had previously used?

12:24:47 17 A. I had known Jim from the Ron Paul 2008,
12:24:59 18 2012 campaign. And I had known Dominic from Family
12:25:02 19 Court years ago.

12:25:06 20 Q. The car was positioned in a way that
12:25:20 21 you were able to shout and have a conversation
12:25:21 22 between the house and the car?

12:25:22 23 A. No. The police car was pointed toward

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12:25:26 1 Schlenker, and the passenger's front window was
12:25:33 2 down, and there's a tree right in front of 37,
12:25:39 3 which was next to the car, and then there's a
12:25:43 4 porch, and there's two upstairs windows, and she
12:25:45 5 was in the upstairs windows where the babies -- the
12:25:48 6 twins' cribs are.

12:25:49 7 And she was watching, and I think she was
12:25:52 8 crying, and she said, what do I do? And I yelled
12:25:57 9 up -- because she said, Jimmy, what do I do? And I
12:26:00 10 yelled up: Call Ostrowski and Dominic.

12:26:05 11 Q. Did you ever yell anything specifically
12:26:07 12 at the police during this period of time?

12:26:09 13 A. No. Never.

12:26:10 14 Q. Did you ever swear or curse --

12:26:13 15 A. No.

12:26:13 16 Q. -- at this point?

12:26:14 17 A. No.

12:26:15 18 Q. Did you ever threaten the police at
12:26:17 19 all?

12:26:17 20 A. No.

12:26:18 21 Q. What happened next?

12:26:27 22 A. Earl disappeared, and I think I laid
12:26:36 23 down in the car because my head hurt. Earl went in

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12:26:43 1 the house.

12:26:44 2 Q. Did there come a time when you were
12:26:45 3 taken away from 33 Schmarbeck by the police?

12:26:54 4 A. Where the car was parked in front of
12:26:57 5 37, yeah. It seemed like a half hour. The whole
12:27:02 6 thing is on the video, though, from this period
12:27:06 7 when I'm sitting in the back of the police car.

12:27:11 8 At some point they got in -- the two male
12:27:13 9 officers got in and --

12:27:16 10 Q. To the car you mean?

12:27:17 11 A. Yeah. And shut the door and --

12:27:22 12 Q. Did they have any conversation with you
12:27:24 13 in the car?

12:27:29 14 A. When they got into the car, I sat back
12:27:31 15 up, and the one was fiddling with the computer, and
12:27:40 16 they didn't -- they didn't say anything to me like
12:27:44 17 address me. They seemed to be talking to each
12:27:46 18 other.

12:27:47 19 Q. Could you hear what they were saying?

12:27:52 20 A. It was not important enough for me to
12:27:54 21 remember it, but when I laid back down, the officer
12:27:59 22 that was in the passenger seat said, oh, I see how
12:28:03 23 you want to play this. Okay.

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12:28:09 1 Q. Did you say anything in response?

12:28:11 2 A. No.

12:28:13 3 Q. What did you take that to mean?

12:28:28 4 A. It was a reflection of his character.

12:28:30 5 A negative reflection of his character.

12:28:32 6 Q. What happened next?

12:28:39 7 A. They drove me to ECMC.

12:28:40 8 Q. Did you ever ask for medical assistance

12:28:43 9 while you were on Schmarbeck?

12:28:47 10 Am I saying that street right?

12:28:49 11 A. Schmarbeck.

12:28:51 12 Q. Schmarbeck.

12:28:51 13 A. It's like the city in Germany.

12:28:53 14 Yeah. I asked Earl to call an ambulance

12:28:55 15 a couple of times.

12:28:56 16 Q. Did you ever ask the police for any

12:28:57 17 medical treatment?

12:28:58 18 A. The police were aware that I had asked

12:29:02 19 Earl. They were standing there, I think. And at

12:29:07 20 one point when they were brutalizing Earl, he told

12:29:12 21 them: I'm calling an ambulance for Dad.

12:29:15 22 Q. Did you ever complain of the pain to

12:29:18 23 your head to the police officers on the scene?

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12:29:20 1 A. Yeah. They knew I was injured.

12:29:21 2 Q. Did you say that to them?

12:29:24 3 A. When I was on the ground I said, Earl,
12:29:28 4 I hit my head, and my head hurts. Call an
12:29:31 5 ambulance.

12:29:31 6 I remember that.

12:29:32 7 Q. Did you ever direct any requests for
12:29:34 8 medical attention specifically to the police?

12:29:39 9 A. They didn't give me any opportunity and
12:29:41 10 they didn't ask me.

12:29:42 11 Q. And you didn't say anything to them
12:29:44 12 like: I need to go to the hospital, or my head
12:29:46 13 hurts?

12:29:47 14 A. Once I was -- once I was in handcuffs,
12:29:50 15 there was little to be said to them that was going
12:29:52 16 to have any positive effect.

12:29:54 17 Q. So you decided not to ask them for
12:29:55 18 medical help or treatment?

12:29:57 19 A. No. They decided not to render aid.

12:30:01 20 Q. Did you ask them for aid?

12:30:04 21 A. They were present when I asked Earl to
12:30:06 22 call the ambulance. Yes. They knew that I needed
12:30:09 23 to see --

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12:30:09 1 Q. The answer is no, you didn't
12:30:11 2 specifically ask the police officers?

12:30:12 3 A. We didn't have any conversation.

12:30:13 4 Q. Okay.

12:30:14 5 A. It was: You're going to jail. Get you
12:30:17 6 up off the ground. Put you in a police car.

12:30:21 7 Q. So at no point did you say, I need to
12:30:24 8 go to the hospital right now, right?

12:30:26 9 A. I might have. I don't have a specific
12:30:30 10 recollection of that.

12:30:32 11 Q. So the police take you to ECMC. Were
12:30:36 12 you examined by a doctor or a physician's assistant
12:30:40 13 there?

12:30:40 14 A. I remember getting out of the car at
12:30:42 15 ECMC, and they took me in the emergency room. I
12:30:46 16 don't remember walking down the hallway in the
12:30:48 17 emergency room.

12:30:52 18 The gospel truth, I don't remember -- from
12:30:56 19 the time the doors opened in the emergency room, I
12:30:58 20 don't even remember how I got in the room.

12:31:00 21 Q. You mentioned earlier you had choice
12:31:02 22 words when at the hospital. What did you mean?

12:31:05 23 A. Yeah. That happened -- that happened

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12:31:07 1 after I was in -- in the -- there's an examining
12:31:13 2 room I guess they use for prisoners that's all the
12:31:16 3 way at the end of the hall, and when I was down
12:31:18 4 there in the examining room, they wanted to
12:31:21 5 orchestrate my care, the two female officers and
12:31:25 6 the two male officers. They wanted to involve
12:31:28 7 themselves in the collection of forensic evidence.

12:31:32 8 Q. What do you mean by that?

12:31:33 9 A. Well, they were telling the doctors and
12:31:36 10 the nurses that I had jumped out in front of the
12:31:39 11 police car. One said I had jumped on the police
12:31:42 12 car.

12:31:44 13 At one point one of these four officers that
12:31:46 14 were there in the emergency room said, yeah, he
12:31:49 15 attacked our police car.

12:31:52 16 Q. It's the same four that were there on
12:31:53 17 the street?

12:31:54 18 A. Yeah.

12:31:54 19 Q. Okay. Did you ever talk to any medical
12:31:59 20 professionals there about what happened?

12:32:02 21 A. Yeah.

12:32:02 22 Q. What did you tell them?

12:32:10 23 A. I identified the woman that was driving

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12:32:12 1 because I could do that. And I said, that one
12:32:15 2 right there, she hit me with a police car, and all
12:32:19 3 four of them are lying about it.

12:32:22 4 Q. What specifically were they lying
12:32:24 5 about?

12:32:26 6 A. Their inference to the staff at ECMC
12:32:28 7 that whatever had happened was my fault. They had
12:32:32 8 a narrative, and they were going to create it, and
12:32:36 9 they were going to get everybody else at ECMC that
12:32:42 10 gets there hundred million dollars from the county
12:32:44 11 in loan guarantees that has the only CPAP unit in
12:32:49 12 the county, they were going to get the people at
12:32:51 13 ECMC to go along with them.

12:32:54 14 Q. Well, did you hear anything being said
12:32:56 15 to that effect?

12:32:58 16 A. Yeah. There was -- the first nurse at
12:33:03 17 ECMC, I don't know her name -- I'd recognize her --
12:33:08 18 but I heard her having this conversation to that
12:33:11 19 effect out in the hallway. And the first thing she
12:33:13 20 said when she walked in to see me was: What's
12:33:18 21 wrong with you? Why did you jump on a police car?

12:33:22 22 And from then on out, I realized that this
12:33:30 23 is -- whatever was going on here is just -- they're

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12:33:33 1 inventing it as they go. There's not a whole lot
12:33:39 2 to be said to these people other than: I don't
12:33:42 3 want that nurse involved in my care.

12:33:44 4 Q. Were you admitted into the hospital?

12:33:46 5 A. I was in the emergency room. I was --
12:33:50 6 I had one hand cuffed to the bed I was on. The
12:33:57 7 right one.

12:33:58 8 Q. So were you admitted, or were you just
12:34:01 9 treated in the emergency room?

12:34:02 10 A. I don't know the minutia of how --
12:34:04 11 whether -- you mean you've got to go up to a floor?

12:34:07 12 Q. Did you stay overnight?

12:34:10 13 A. I think I was there about four hours.
12:34:12 14 I think I was -- they use a police term, it's
12:34:16 15 called cleared for booking. That's not a legal
12:34:18 16 term or a medical term. It's a term the police
12:34:22 17 have invented. I was cleared for booking, and I
12:34:26 18 think it took about four or five hours.

12:34:28 19 Q. Did you receive any diagnostic testing
12:34:30 20 while you were there, like x-rays or CAT scans?
12:34:32 21 Anything of that sort?

12:34:35 22 A. Can I read from a piece of paper to
12:34:38 23 tell you what they did or --

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12:34:39 1 Q. Well --

12:34:40 2 A. -- no?

12:34:41 3 Q. -- I can get authorizations through
12:34:42 4 your attorney, which --

12:34:43 5 A. I've got a bill.

12:34:44 6 Q. Sure. What I'm trying to figure out is
12:34:46 7 what you recall yourself from that day.

12:34:48 8 A. Okay.

12:34:48 9 Q. Do you recall if you received any type
12:34:50 10 of testing?

12:34:52 11 A. I don't know if it was an MRI, a
12:34:54 12 CAT scan. I don't know the difference. But I went
12:34:56 13 in the big machine. That lasted less than a
12:34:59 14 minute. It was real peripheral.

12:35:05 15 Q. Did you ever speak to a doctor or have
12:35:07 16 a doctor examine you that day?

12:35:08 17 A. Yeah.

12:35:10 18 Q. Did you receive any type of medical
12:35:11 19 diagnosis?

12:35:14 20 A. Not that I was aware of that day. I
12:35:17 21 became aware of it later on. My discharge plan.
12:35:21 22 When they -- when you get out of the emergency
12:35:24 23 room, they give you a discharge thing to tell you

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12:35:25 1 what you should look for.

12:35:30 2 When I finally got that, it said, look for a
12:35:33 3 concussion, symptoms of a concussion. But that was
12:35:36 4 confiscated by the officer in the car that hit me.
12:35:39 5 She got that. And then they took me to Central
12:35:42 6 Booking and they never gave that to me.

12:35:44 7 I wouldn't even be aware of that now had I
12:35:47 8 not got medical records later on and found that
12:35:50 9 document. But I was never given a discharge plan
12:35:53 10 at the hospital.

12:35:54 11 The hospital's records indicate that she was
12:35:58 12 given that document. Discharge planning given to
12:36:01 13 the police.

12:36:02 14 Q. Did they ever prescribe you any
12:36:03 15 medication while you were there?

12:36:06 16 A. I think they told me like take
12:36:08 17 ibuprofen or something for a headache.

12:36:10 18 Q. Okay. Do you recall the injuries that
12:36:12 19 you complained of when you were there?

12:36:13 20 A. Yeah. The first one, the one that
12:36:15 21 upset me the most was when the doctor came in, I
12:36:20 22 was sitting in the -- I was sitting in the hospital
12:36:25 23 bed with the handcuffs on and both my hands were

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12:36:31 1 numb.

12:36:31 2 Q. Did you ever complain of --

12:36:33 3 A. And I complained to the doctor. I
12:36:34 4 said, I can't feel my hands. So the doctor said,
12:36:38 5 can't we take the handcuffs off? Or something to
12:36:42 6 that effect, directing the officers to take the
12:36:44 7 handcuffs off.

12:36:45 8 And when the handcuffs came off, both of my
12:36:52 9 wrists were black and blue. My right wrist had
12:36:56 10 a -- had more than just a black and blue mark. It
12:36:59 11 was down through the -- through the skin on both
12:37:02 12 sides of my wrist, and this one had the same thing
12:37:05 13 here and here. And I looked like I had barbed wire
12:37:11 14 wrapped around my arms.

12:37:12 15 Q. Did you ever complain about the
12:37:13 16 handcuffs to the police officers?

12:37:23 17 A. Yes.

12:37:23 18 Q. Did you ever ask that they be loosened?

12:37:27 19 A. Yeah. When I became aware that I was
12:37:29 20 in the emergency room and I was in the bed, I said,
12:37:32 21 can you take these off? They hurt.

12:37:34 22 Q. It was only at that point with that
12:37:36 23 doctor that you brought that up?

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12:37:38 1 A. Well, for whatever reason, the
12:37:41 2 unreasonable police, that I thought they were being
12:37:44 3 unreasonable at that point, I didn't think they
12:37:49 4 were going to be reasonable enough, until they felt
12:37:52 5 themselves in a safe environment, to get these
12:37:55 6 handcuffs off of me.

12:37:58 7 So the doctor told them to take them off,
12:38:00 8 they took them off, and they were swelled up. And
12:38:03 9 I said, somebody get a camera. Somebody get a
12:38:05 10 cell phone and take pictures of my hands. Look
12:38:08 11 what they did to me.

12:38:09 12 Q. So up until that point, you never
12:38:12 13 mentioned anything about your wrists or the
12:38:13 14 handcuffs to the police officers?

12:38:17 15 A. I never mentioned anything to the
12:38:18 16 officer that said he was going to charge me with
12:38:21 17 fraud, no. And the two female officers, after they
12:38:26 18 left Schmarbeck at 37, I didn't see them again
12:38:29 19 until they were at the hospital.

12:38:32 20 The officer that was driving the police car,
12:38:35 21 the one who had originally talked to Mike at the
12:38:38 22 curb, no. I was laid back in the back of a police
12:38:42 23 car with my head hurting. I wasn't about to have

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12:38:46 1 conversations with these people that had put the
12:38:47 2 handcuffs on me.

12:38:50 3 Was I going to tell them to pull the car
12:38:52 4 over and take the handcuffs off? No, I wasn't
12:38:54 5 going to do that.

12:38:55 6 There was no really good opportunity, other
12:38:58 7 than once I got to the hospital, to say, you've
12:39:00 8 injured me. Take these things off. They're on too
12:39:03 9 tight. You've brutalized me.

12:39:07 10 No. I didn't have that chance until I got
12:39:09 11 there.

12:39:09 12 Q. So for the entire car ride between
12:39:11 13 Schmarbeck and ECMC, you never once brought up the
12:39:13 14 handcuffs or --

12:39:14 15 A. I pretty much had my head down and
12:39:17 16 said, listen--

12:39:17 17 Q. I'm just going to direct you just to
12:39:18 18 answer my question.

12:39:19 19 During the drive from Schmarbeck to ECMC,
12:39:21 20 you never brought up the handcuffs or any pain to
12:39:25 21 your wrists to the police officers?

12:39:26 22 A. No. No. Oh, they were well aware I
12:39:29 23 was in pain. No, I didn't bring it up.

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12:39:31 1 Q. How would the police be aware that you
12:39:34 2 were in pain?

12:39:34 3 A. I was laying down in the back seat of
12:39:36 4 the police car.

12:39:37 5 Q. Did you ever verbalize that you were in
12:39:39 6 pain to them?

12:39:41 7 A. Yeah. They were aware of that when I
12:39:43 8 asked Earl to call an ambulance because I hit my
12:39:46 9 head.

12:39:46 10 Q. Okay. But, again, you never asked them
12:39:48 11 for medical treatment yourself?

12:39:52 12 A. I think the inference was clear by
12:39:53 13 asking for an ambulance, that they were aware of
12:39:58 14 and they had actually canceled ambulance calls.

12:40:00 15 Q. How do you -- what makes you think they
12:40:03 16 canceled an ambulance?

12:40:12 17 A. Can I say hearsay?

12:40:13 18 Q. Well, I mean, any time I ask you a
12:40:15 19 question about what someone's saying, that's
12:40:17 20 hearsay.

12:40:17 21 A. Okay. Rachel told me later on, when
12:40:19 22 she was sitting in the window watching all this,
12:40:21 23 crying, with the three babies upstairs, she said,

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12:40:26 1 the officer -- the male officer in the passenger
12:40:32 2 side of the car, the male officer had got on his
12:40:37 3 radio and -- you know, his little chin strap radio
12:40:40 4 or shoulder radio, and said, cancel all ambulance
12:40:44 5 requests from 41, 37, and 33 Schmarbeck.

12:40:51 6 Q. But that's nothing that you knew at the
12:40:53 7 time that this was happening, correct? Rachel only
12:40:58 8 tells you this later?

12:40:59 9 A. She confirms it later. I as much as
12:41:02 10 suspected it when they were beating up on Earl.
12:41:04 11 When they were brutalizing Earl. I won't say
12:41:07 12 beating up.

12:41:07 13 Q. So you never heard them do that; you
12:41:09 14 just speculated that that's what they were doing?

12:41:11 15 A. I never heard them do that.

12:41:13 16 Q. Okay.

12:41:13 17 A. I just -- when's the ambulance going to
12:41:17 18 get here? And the ambulance never came.

12:41:18 19 Q. Any other injuries that you complained
12:41:19 20 of at ECMC?

12:41:20 21 A. Yeah. My head. My arms were pretty
12:41:25 22 well numb from like here down, my hands, and the
12:41:31 23 back of my head. The back of my head hurt really

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12:41:33 1 bad.

12:41:34 2 Q. Were you given any instructions to
12:41:36 3 follow up with or receive other medical treatment?

12:41:40 4 A. I didn't -- I -- those instructions
12:41:43 5 were issued by the ECMC emergency room, but I never
12:41:47 6 got them because they were given to the police, who
12:41:50 7 told the ECMC emergency room staff they were going
12:41:54 8 to take me to jail.

12:41:56 9 And then when we got down to Central
12:41:59 10 Booking, I was issued an appearance ticket, but
12:42:02 11 I wasn't released.

12:42:04 12 Q. Okay. Have you ever had any injuries
12:42:06 13 to your hands or wrists before?

12:42:11 14 A. Not anything major. I mean, you get
12:42:13 15 a cut or something.

12:42:14 16 Q. Ever break your wrist?

12:42:15 17 A. No. I've never had a broken bone.

12:42:19 18 Q. Any nerve issues ever to your wrists or
12:42:22 19 hands?

12:42:24 20 A. No. I had a -- no, I've never had
12:42:29 21 anything.

12:42:29 22 Q. What about to your head? Have you ever
12:42:31 23 suffered any concussions before?

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12:42:32 1 A. No.

12:42:32 2 Q. Any type of neurological issues to your

12:42:34 3 head?

12:42:35 4 A. Yeah. I had a schwannoma tumor removed

12:42:39 5 from my spine.

12:42:41 6 Q. Is that back surgery, or --

12:42:43 7 A. Yeah.

12:42:43 8 Q. -- is that --

12:42:45 9 A. Lower back.

12:42:49 10 Q. Does that cause any type of numbness to

12:42:52 11 any extremities of your body?

12:42:55 12 A. What I'm experiencing now is not

12:42:57 13 related to my back because I didn't have it until

12:42:59 14 the 1st of January. I'm not a neurologist.

12:43:05 15 Q. Sure. I'm not either.

12:43:06 16 A. And what happens with the top of your

12:43:08 17 back and the bottom of your back and your left and

12:43:10 18 right feet and arms, you read stuff: Well, this

12:43:14 19 can -- you can get numb here from that. But no,

12:43:17 20 I don't know.

12:43:17 21 Q. When did you have that surgery to your

12:43:19 22 spine?

12:43:22 23 A. The last time I worked was in '98, so

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12:43:25 1 I'm going to say it was in '98. I've never worked
12:43:28 2 after that. Not for a wage. Not at a job with an
12:43:31 3 hourly wage.

12:43:32 4 Q. So about 1999 you think you had that
12:43:34 5 surgery?

12:43:34 6 A. Yeah. Dr. Enunchuck, Hamburg. Was
12:43:40 7 performed at Buffalo General. Dr. Enunchuck is the
12:43:43 8 neurologist, neurosurgeon in Hamburg who did it.

12:43:46 9 Q. What was the -- during the time at
12:43:49 10 ECMC, did you ever yell at the hospital staff?

12:43:59 11 A. Yes.

12:44:00 12 Q. What did you yell at them?

12:44:01 13 A. I don't want that nurse involved with
12:44:03 14 my care.

12:44:04 15 That was the first nurse that walked in.

12:44:08 16 I'm going to call her the forensic nurse. After
12:44:11 17 she told me that I jumped on a police car, I was
12:44:14 18 like: Nope. We're done. I can tell already
12:44:17 19 you've been tainted.

12:44:17 20 Q. Did you ever swear or threaten any of
12:44:20 21 the medical staff?

12:44:20 22 A. No. I never threatened anybody.

12:44:22 23 Q. Did you ever swear or yell at the

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12:44:23 1 police while you were there?

12:44:25 2 A. I was rather boisterous and loud in my
12:44:28 3 assertions that this foolishness was not going to
12:44:41 4 go unhistorilized. Does that help you?

12:44:44 5 Q. Did you use those words?

12:44:46 6 A. No.

12:44:46 7 Q. What were the words you were using?

12:44:53 8 A. I think I -- I think I called the two
12:44:55 9 women feminazis.

12:44:57 10 Q. Why did you use those terms?

12:44:59 11 A. Because their costumes kind of
12:45:02 12 resembled Army uniforms, and they had -- there was
12:45:06 13 like flak jackets on that the Army uses, and they
12:45:11 14 kind of walked around and were trying to extend
12:45:13 15 their authority the way a jackbooted thug nazi
12:45:17 16 would be thought of.

12:45:18 17 And I wasn't alive in World War II, but you
12:45:22 18 read and you see movies. That's how they acted, I
12:45:25 19 think. And that's the way these were acting. As
12:45:27 20 though they had somehow arrested a wanted and
12:45:30 21 hardened fugitive and that they are in the right
12:45:33 22 and that what happened here was all his fault.

12:45:38 23 Q. Did you ever threaten them?

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12:45:40 1 A. I think I told them I was going to go
12:45:44 2 to Internal Affairs.

12:45:45 3 Q. Did you ever make a report to Internal
12:45:47 4 Affairs?

12:45:47 5 A. No. I wouldn't go to Internal Affairs.

12:45:50 6 No.

12:45:50 7 Q. Why not?

12:46:00 8 A. I don't think they're independent
12:46:02 9 enough to come to any kind of a reasonably
12:46:06 10 independent determination about anything. I don't
12:46:10 11 think the police investigating the police can
12:46:12 12 happen.

12:46:15 13 Q. Do you know how long you were at ECMC
12:46:17 14 for?

12:46:19 15 A. I was there twice that day.

12:46:24 16 Q. So let's just talk about the first time
12:46:26 17 then.

12:46:26 18 A. I'm going to think I was there for
12:46:28 19 three hours, maybe four.

12:46:29 20 Q. During that period of time, were you
12:46:30 21 ever -- were there other people -- doctors,
12:46:34 22 patients -- around in the area where you were in?

12:46:37 23 A. No. The room I was in was a private

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12:46:40 1 room. There were -- there was a door on the right,
12:46:43 2 and there was a door on the left. They both went
12:46:46 3 out in the hall.

12:46:48 4 And what would happen whenever a clinician
12:46:51 5 would come in is one of these two feminazi cops
12:46:55 6 would walk in and interdict in my care or try to
12:47:02 7 create a narrative for this new clinician that:
12:47:07 8 Oh, yeah. He jumped out in front of our police
12:47:09 9 car.

12:47:09 10 It was like the more they told the story,
12:47:11 11 the more they thought they were going to be
12:47:14 12 believed.

12:47:14 13 Q. So about what time were you taken from
12:47:16 14 ECMC to Central Booking?

12:47:20 15 A. I'm going to say 2, 2:30.

12:47:23 16 I could probably find out exactly looking at
12:47:25 17 documents, but about 2, 2:30.

12:47:28 18 Q. How were you transported to Central
12:47:30 19 Booking?

12:47:32 20 A. In a police car.

12:47:33 21 Q. Did you have any conversation with the
12:47:35 22 police while you were with them during that ride?

12:47:40 23 A. That was the two women.

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12:47:41 1 Q. Same two women from earlier on

12:47:43 2 Schmarbeck?

12:47:44 3 A. Yeah. The two women were the same two
12:47:47 4 women officers. Honest to God, I don't think I
12:47:54 5 said anything to them.

12:47:55 6 Q. What happened once you got to Central
12:47:56 7 Booking?

12:47:57 8 A. Well, they strip searched me and looked
12:47:59 9 up my ass.

12:47:59 10 Q. Who did that?

12:48:01 11 A. The Central Booking staff. The Central
12:48:04 12 Booking staff were asking these two officers:
12:48:07 13 What's going to happen to him? Where is he going
12:48:10 14 to go? Is he going to go upstairs to jail? You
12:48:12 15 know, what's going to happen? Or are they taking
12:48:15 16 him somewhere?

12:48:16 17 And the two women officers wouldn't respond
12:48:18 18 to those queries in my presence. And so they --
12:48:24 19 sooner than saying, well, he's getting an
12:48:27 20 appearance ticket, so that they didn't have to do a
12:48:29 21 strip search and look up my ass, they decided that
12:48:34 22 they would go ahead and let me be demoralized,
12:48:38 23 dehumanized, and go through this whole experience

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12:48:41 1 down at Central Booking, and then they would give
12:48:43 2 me -- give the staff the knowledge that I was
12:48:47 3 leaving. But I really wasn't leaving. They had
12:48:49 4 more planned.

12:48:50 5 Q. At any point were you informed what
12:48:54 6 charges were being pressed?

12:48:58 7 A. The first time I found out what I was
12:49:00 8 being charged with formally was when I was handed
12:49:04 9 the appearance ticket.

12:49:06 10 Q. You were still in Central Booking at
12:49:08 11 that point?

12:49:08 12 A. Yeah.

12:49:08 13 Q. Were you ever placed in a cell?

12:49:16 14 A. Yeah. See, I came in, I sat on a bench
12:49:20 15 in a hallway with like a bank teller window, and
12:49:24 16 then I was taken down the hallway and the pictures
12:49:29 17 and the strip search, and then I was brought back.

12:49:31 18 And there was a cell off to the side. I
12:49:33 19 think she told me to step into the cell, and I
12:49:35 20 walked into the cell, and then she said, no, come
12:49:38 21 out here and sit in the hallway.

12:49:40 22 I think that's -- but I was never in a cell
12:49:42 23 with other inmates, the way you would think of a

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12:49:46 1 cell with bars.

12:49:47 2 Q. Did you ever request medical attention
12:49:49 3 while you were at Central Booking?

12:49:51 4 A. I had just left the hospital. I
12:49:54 5 figured the sooner I get this over with, the sooner
12:49:57 6 I can get to a doctor of my own choosing.

12:50:01 7 Q. So you made no requests to any of the
12:50:02 8 staff at Central Booking for medical treatment?

12:50:04 9 A. They were -- okay. This is -- this is
12:50:07 10 in regards to that. This does answer your question.

12:50:15 11 Inside the bank teller window, the woman
12:50:19 12 that was booking me through, there was an envelope
12:50:24 13 from ECMC, and the lady who was booking us through
12:50:29 14 asked one of the two female police officers: Where
12:50:33 15 is he coming from? They said ECMC. Do you have
12:50:36 16 anything with him?

12:50:38 17 And at this time she was inside this booth,
12:50:42 18 and she opened -- made a flourish to open it up.
12:50:45 19 She says, oh, these must be his medical records.
12:50:47 20 She pulled it out and said, oh, yeah, they're his
12:50:50 21 medical records.

12:50:51 22 And she gave those medical records to the
12:50:54 23 woman that was booking -- that was inside this --

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12:50:58 1 Q. Sir, my question, though, was: Did you
12:51:00 2 ever make a request to any staff at Central
12:51:02 3 Booking?

12:51:03 4 A. I wasn't there very long. What I mean
12:51:05 5 by that is I was never asked that question when
12:51:09 6 they took my picture.

12:51:10 7 Q. Well, my question is: Did you ever
12:51:12 8 make a request to staff at Central Booking? It's
12:51:18 9 a yes or no.

12:51:19 10 A. You're right, it is. No, I never did.

12:51:23 11 Q. Were you experiencing any injuries at
12:51:27 12 that point when you were at Central Booking?

12:51:29 13 A. My head still hurt, but not near as
12:51:32 14 much as it did when I hit the ground.

12:51:33 15 Q. Were you bleeding?

12:51:34 16 A. No. No. I never had that kind of an
12:51:38 17 injury where, you know, blood was gushing out of
12:51:42 18 me. The worst that I could see was the handcuff
12:51:46 19 injury and the back of my head. I couldn't figure
12:51:49 20 out why the back of my head wasn't swelled up. I
12:51:53 21 kept trying to feel for knots.

12:51:56 22 Q. You were just experiencing pain there?

12:51:58 23 A. It hurt.

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12:52:01 1 Q. Did you ever see a judge?

12:52:02 2 A. At Central Booking?

12:52:02 3 Q. Yes.

12:52:04 4 A. No.

12:52:04 5 Q. Were you ever taken in to like

12:52:07 6 arraignment?

12:52:07 7 A. At Central Booking? No.

12:52:10 8 Q. And eventually you were given a desk

12:52:13 9 appearance ticket?

12:52:14 10 A. I signed an appearance ticket. I don't

12:52:17 11 know if it's a desk appearance.

12:52:22 12 Q. Sure.

12:52:25 13 How long were you at Central Booking?

12:52:26 14 A. I'm going to say about an hour. I

12:52:29 15 might be wrong.

12:52:30 16 Q. Did there come a time when you were

12:52:31 17 released from Central Booking?

12:52:33 18 A. No. They put me back in a police car

12:52:34 19 and took me back to ECMC.

12:52:36 20 Q. Do you know why you were taken back to

12:52:37 21 ECMC?

12:52:38 22 A. Not at the time. They didn't tell me:

12:52:41 23 We're going to take you back to ECMC.

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12:52:43 1 When they loaded me into the car at Central
12:52:45 2 Booking, as in taking me out, I thought they were
12:52:49 3 taking me like to Alden Holding Center or some
12:52:52 4 other jail or some other wing of the prison.

12:52:55 5 Q. Did you ever ask -- did you ever ask
12:52:56 6 where you were going?

12:52:59 7 A. At this point I'm still under the power
12:53:01 8 and control of these two feminazis, and I don't
12:53:04 9 think I'm going to get a straight answer from them
12:53:07 10 even if I ask them for something, so --

12:53:09 11 Q. Well, it's a yes or no question, right?
12:53:11 12 I'm going to direct you to answer my question.

12:53:14 13 A. Okay.

12:53:15 14 Q. Did you ever ask them where you were
12:53:17 15 going?

12:53:17 16 A. No.

12:53:18 17 Q. What happened when you got back to
12:53:21 18 ECMC?

12:53:25 19 A. We went back in the emergency room, and
12:53:29 20 I'm not really familiar with like the corridors
12:53:34 21 there, but we went through the emergency room and
12:53:38 22 through a bunch of corridors and we got to a door.
12:53:42 23 It was a CPAP unit.

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12:53:49 1 Q. Did you undergo any additional diagnostic
12:53:54 2 testing, like x-rays or CAT scans, when you were
12:53:56 3 there that second time?

12:54:06 4 A. The question of diagnostic, I -- but
12:54:09 5 I didn't have any like CAT scans or machine
12:54:13 6 diagnostic.

12:54:14 7 Q. So somebody examined you?

12:54:15 8 A. Yeah. I was triaged.

12:54:19 9 Q. Were you given any medical diagnosis
12:54:21 10 that second stay at ECMC?

12:54:23 11 A. No. My understanding -- to be frank,
12:54:31 12 my understanding was gleaned from that experience
12:54:35 13 at the CPAP unit that until halfway through it,
12:54:38 14 they didn't even know I had been in the emergency
12:54:40 15 room that morning, so they were just treating me as
12:54:44 16 if I had been picked up by two policemen and
12:54:47 17 brought there and dropped off.

12:54:49 18 Q. Did the -- did you speak to a doctor
12:54:52 19 while you were there?

12:54:53 20 A. After the triage, I spoke to two -- two
12:54:56 21 different people there. One was a woman. I think
12:55:00 22 she was a psychiatric nurse. And then the second
12:55:02 23 one was a man, oriental guy. I think he was a

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12:55:07 1 psychiatrist.

12:55:09 2 After the triage, speaking to the woman, I
12:55:13 3 think that interview lasted about five minutes, and
12:55:15 4 then I think the interview with the doctor lasted
12:55:17 5 about two, maybe three minutes.

12:55:19 6 Q. Did you curse or yell during that exam?

12:55:21 7 A. No, no, no, no.

12:55:25 8 Q. Were you prescribed any medication --

12:55:27 9 A. No.

12:55:27 10 Q. -- that second trip?

12:55:28 11 A. No.

12:55:30 12 Q. At what point did you leave ECMC that
12:55:32 13 second time?

12:55:34 14 A. The second clinician, the doctor I
12:55:37 15 spoke to for a couple minutes, I essentially
12:55:40 16 explained to him a lot of the ground we've covered
12:55:44 17 here today. And he said, is there any way I can
12:55:46 18 confirm this? And I said, well, you can call
12:55:50 19 Rachel. She was at home. She watched the whole
12:55:52 20 thing.

12:55:54 21 And he said, so you have a lawyer? I said,
12:55:56 22 yeah. I've got a couple of them. And he said,
12:55:58 23 they're already involved in this? And I said,

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12:56:01 1 yeah, I hope. And he said, well, let me call
12:56:05 2 Rachel.

12:56:05 3 So he left. About ten, 15 minutes later, a
12:56:10 4 woman called my name, and I walked up and said,
12:56:13 5 yes. And she said, you've got the golden ticket.
12:56:15 6 And I said, well, that's Charlie and the Chocolate
12:56:19 7 Factory. She said, no. The doctor has ordered
12:56:23 8 your release immediately.

12:56:24 9 Q. Do you recall the name of that doctor?

12:56:25 10 A. Not off the top of my. I've got
12:56:27 11 records that indicate who the guy was.

12:56:30 12 Q. Okay.

12:56:30 13 A. But I don't -- I don't remember his
12:56:32 14 name.

12:56:32 15 Q. Did you leave ECMC of your -- on your
12:56:36 16 own?

12:56:36 17 A. They were going to get me a cab home,
12:56:38 18 but Rachel had followed essentially where I was
12:56:43 19 most of the day, with the help of other people, and
12:56:48 20 she came to the hospital.

12:56:49 21 I think Earl was watching the three boys,
12:56:52 22 and she came to the hospital, and she picked me up
12:56:55 23 right there at the door, and they had already

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12:56:57 1 called a cab, but Rachel came and got me.

12:56:59 2 Q. So at what point did the police leave
12:57:01 3 you at ECMC?

12:57:03 4 A. When I got to the door of the CPAP
12:57:10 5 unit, my hands were still cuffed, and the one
12:57:13 6 police officer said, do you want me to take the
12:57:15 7 handcuffs off now? We're at the door where the
12:57:21 8 clinicians from the CPAP unit are going to come.

12:57:24 9 And I said, well, you've been brutalizing me
12:57:28 10 all day. I said, now you're going to take the
12:57:33 11 handcuffs off and try to make yourselves look good
12:57:36 12 in front of these CPAP people? I said, how much
12:57:39 13 longer do you think they're going to be on? He
12:57:41 14 said, oh, a minute or so. I said, well, why don't
12:57:44 15 you just let the handcuffs stay on for the next
12:57:46 16 minute.

12:57:46 17 Q. So you didn't complain about them
12:57:49 18 hurting you or anything?

12:57:49 19 A. Well, they weren't on excessively at
12:57:53 20 that point in the day. The injury had already been
12:57:56 21 sustained, and they were kind of loose. And I
12:57:58 22 said, well, you know, let's not -- let's show them
12:58:02 23 what you did, you know.

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12:58:03 1 Q. But you didn't ask them to be taken off
12:58:05 2 at the point that they offered to take them off?

12:58:07 3 A. I asked them how much longer they were
12:58:09 4 going to be on. They said, another minute or so.
12:58:11 5 I said, well, let the staff see how you treat
12:58:14 6 people when you bring them to CPAP who were
12:58:18 7 completely reasonable.

12:58:18 8 Q. Did you ever threaten the police in the
12:58:20 9 ride from Central Booking --

12:58:21 10 A. No.

12:58:21 11 Q. -- to ECMC?

12:58:22 12 A. No.

12:58:22 13 Q. Did you ever curse at them during that
12:58:23 14 ride?

12:58:24 15 A. No.

12:58:24 16 Q. Did you have any conversation with them
12:58:26 17 during that ride?

12:58:27 18 I'm sorry. I think I already asked you
12:58:29 19 that.

12:58:30 20 A. The first two male officers or the
12:58:32 21 second set of female officers?

12:58:34 22 Q. Second set of females.

12:58:35 23 A. No. I don't think I had any -- I don't

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12:58:38 1 think I had any conversation with them.

12:58:46 2 Q. When were you arraigned on criminal
12:58:49 3 charges?

12:58:55 4 A. It was unusual, because it was ten or
12:58:58 5 12 days after.

12:58:59 6 When they gave me that appearance ticket,
12:59:01 7 they gave me an appearance ticket for a felony, and
12:59:05 8 then I had to come back for the arraignment like
12:59:08 9 ten or 12 days later.

12:59:09 10 Q. Did the ticket direct you what day to
12:59:11 11 come back to court?

12:59:11 12 A. Yeah.

12:59:11 13 Q. Do you recall what judge you appeared
12:59:13 14 in front of?

12:59:13 15 A. McLeod.

12:59:16 16 Q. Was it the same judge every time?

12:59:19 17 A. Yeah.

12:59:20 18 Q. Do you recall how many times you went
12:59:21 19 back to court?

12:59:26 20 A. If I said six or seven.

12:59:33 21 Q. On your first arraignment did you enter
12:59:38 22 a plea?

12:59:43 23 A. I think I did, but I can't remember for

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12:59:44 1 sure.

12:59:45 2 Q. Okay. Did you have an attorney with
12:59:48 3 you?

12:59:48 4 A. I can't remember if Jim was in the
12:59:51 5 arraignment at that point. I'm pretty sure he was,
12:59:54 6 because at that point, I didn't know I had been
12:59:57 7 charged with a felony, and I think it was at the
12:59:59 8 arraignment that Jim discovered that it was a
13:00:02 9 felony charge for the first time. We thought that
13:00:04 10 they had charged me with a misdemeanor.

13:00:06 11 Q. Was Jim your attorney on the criminal
13:00:08 12 matter?

13:00:09 13 A. Yes.

13:00:09 14 Q. Did you incur any fees or expenses as a
13:00:12 15 result of the criminal case?

13:00:17 16 A. Yes.

13:00:20 17 Q. What type of fees did you -- or
13:00:22 18 expenses did you incur?

13:00:25 19 A. Well, I had to pay Jim to represent me
13:00:27 20 in the felony, and there was a violation attached
13:00:30 21 to that as well.

13:00:31 22 Q. So was there a court mandated fee?

13:00:35 23 A. No.

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13:00:36 1 Q. I'm sorry. A violation means one thing
13:00:37 2 to me. Let me just clarify. What do you mean by
13:00:40 3 violation?

13:00:41 4 A. A V is below a misdemeanor?

13:00:45 5 Q. Sure. Did you end up pleading guilty
13:00:49 6 to a violation?

13:00:50 7 A. No. Both the charges were dismissed.

13:00:52 8 Q. Okay. Do you know why they were
13:00:53 9 dismissed?

13:01:06 10 A. I believe it was because I didn't -- I
13:01:07 11 wasn't guilty of either one of them. If there's a
13:01:10 12 legal minutia in there.

13:01:12 13 Q. Do you know if they were outright
13:01:13 14 dismissed, or did you take what's called an ACD?

13:01:16 15 A. No. They were outright dismissed.

13:01:18 16 Q. Did you ever give any testimony -- did
13:01:20 17 you ever appear in the grand jury regarding that?

13:01:27 18 A. No. The charges -- the felony, they
13:01:29 19 never had a felony hearing and that was never
13:01:31 20 presented to the grand jury. I was willing to
13:01:34 21 testify at the grand jury but that never happened.

13:01:36 22 Q. Did you ever give -- I'm sorry. I may
13:01:39 23 have just asked you this again. Did you ever give

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13:01:41 1 any testimony regarding this incident during the
13:01:44 2 criminal case?

13:01:49 3 A. No.

13:01:50 4 Q. Are you aware if any police officers
13:01:53 5 gave any testimony during the criminal case?

13:01:55 6 A. They made sworn statements. Part of a
13:02:02 7 complaint would be a sworn affidavit.

13:02:04 8 Q. Sure. So you're aware of a complaint.

13:02:07 9 Are you aware of them testifying in court at all?

13:02:08 10 A. I'm not aware of them testifying in
13:02:10 11 court.

13:02:10 12 And there's an additional sworn statement
13:02:13 13 which one of the two female officers made that
13:02:20 14 provided my entry into the CPAP unit. So there is
13:02:27 15 a -- under mental health law, she had to make a
13:02:29 16 sworn statement there too, so there were two sworn
13:02:33 17 statements by her.

13:02:43 18 Q. Do you recall the ADA who handled the
13:02:45 19 criminal matter?

13:02:47 20 A. No, I don't. It was a man.

13:02:56 21 Q. Aside from yourself, Earl, Rachel, and
13:03:01 22 the police officers present, are you aware if there
13:03:04 23 were any other witnesses to what happened on

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13:03:07 1 January 1st, 2017?

13:03:09 2 A. Mike Wolfe might have been in his house
13:03:11 3 looking out the window.

13:03:12 4 Q. Did you ever discuss this incident with
13:03:14 5 him?

13:03:16 6 A. No.

13:03:19 7 Q. I know you mentioned before that Mike,
13:03:23 8 shortly thereafter, stopped being your tenant. Did
13:03:25 9 that have any connection to this incident?

13:03:28 10 A. No. He was well on his way gone before
13:03:29 11 this ever happened. In fact, that's why -- one of
13:03:32 12 the reasons I took Earl downstairs and said, let's
13:03:34 13 go find out from these cops what's going on.

13:03:37 14 Because I have a lot of tenants from
13:03:40 15 Restoration, and I have a lot of tenants with
13:03:43 16 mental health problems, and they get in weird
13:03:46 17 things where they're in crisis in weird ways, and
13:03:49 18 if you know them and you've known them for four or
13:03:52 19 five months, sometimes you can see that.

13:03:54 20 But if you're a policeman and you pull up at
13:03:56 21 the curb and you talk to them for 30 seconds,
13:03:58 22 sometimes you don't know or sometimes you don't
13:04:01 23 care. And in Buffalo's great open-air prison, the

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13:04:06 1 East Side, a lot of the policemen don't care if
13:04:09 2 they're having a problem. Let's just get out of
13:04:11 3 here.

13:04:13 4 Q. So I know you mentioned you had pain to
13:04:15 5 the back of your head, pain to your wrists,
13:04:17 6 numbness to your hands.

13:04:18 7 Any other injuries you suffered on
13:04:19 8 January 1st, 2017?

13:04:22 9 A. The extent of my injuries right now
13:04:24 10 that I can -- that I relate directly to this, I
13:04:31 11 think I have rotator cuff injuries or something's
13:04:34 12 wrong with my shoulders. Particularly my right
13:04:36 13 side. I have numbness, and it moves, but I have
13:04:42 14 problems with my wrists, my elbow, and my shoulder
13:04:46 15 on the right side. This hurts to touch. And the
13:04:50 16 left side, the same thing, but to a lesser extent.
13:04:52 17 It comes and goes less over here.

13:04:55 18 Q. After ECMC on those two days, did you
13:04:57 19 receive any other medical treatment after that?

13:04:58 20 A. I went to see my primary.

13:05:01 21 Q. Who is your primary?

13:05:05 22 A. It's 1500 Broadway. I want to tell you
13:05:13 23 her name, but I can't.

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J. Kistner - Huggins - 6/27/17

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13:05:14 1 Q. Do you know the name of the practice
13:05:16 2 group or -- that she's in?

13:05:18 3 A. No. St. Vincent. It's in a medical
13:05:23 4 mall at 1500 Broadway.

13:05:27 5 Q. Did your primary care do any diagnostic
13:05:29 6 testing on your shoulder or any other body parts as
13:05:32 7 a result of this?

13:05:33 8 A. That was the first time I had ever seen
13:05:35 9 her. It was the first time I ever seen my primary
13:05:39 10 care physician, and she interviewed me, and she
13:05:42 11 said, what do you want to do? I said, well, I
13:05:45 12 think I need to see a neurologist. So she referred
13:05:49 13 me to a neurologist.

13:05:50 14 Q. What's the name of the neurologist?

13:05:52 15 A. The one -- I can't remember the one she
13:05:56 16 referred me to, but I'm still waiting to see a
13:05:58 17 neurologist. A lot of this is supposed to go away
13:06:01 18 on its own. A lot of the handcuff injury, with
13:06:07 19 time, it goes away on its own.

13:06:10 20 Q. Is that what your primary care told
13:06:12 21 you?

13:06:13 22 A. No. My primary care doctor, she
13:06:15 23 essentially read the ECMC medical report and kind

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J. Kistner - Huggins - 6/27/17

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13:06:20 1 of reiterated what they said: Medical records from
13:06:24 2 ECMC indicate he jumped on a police car. That is
13:06:29 3 counter to what he tells me.

13:06:33 4 Q. Did you ever end up actually getting
13:06:35 5 examined by a neurologist?

13:06:37 6 A. No, not yet.

13:06:37 7 Q. Do you have an upcoming appointment
13:06:40 8 scheduled?

13:06:48 9 A. No. The money has prevented that. As
13:06:51 10 soon as they find out there's a lawsuit, they want
13:06:53 11 cash. They will not accept Obamacare or any kind
13:06:57 12 of health insurance.

13:06:57 13 I've talked to two neurologist offices, and
13:06:59 14 the one said, well, if you're suing somebody,
13:07:01 15 you've got to bring us cash. And then the other
13:07:03 16 one said the same thing. But one was a little bit
13:07:06 17 cheaper than the other one.

13:07:07 18 And I wanted to stick with Catholic Health,
13:07:09 19 so I've got one; now all I've got do is get the
13:07:13 20 money to go see one.

13:07:14 21 Q. So I take it by what you just said, you
13:07:17 22 don't have medical insurance?

13:07:17 23 A. No. I'm eligible for -- to apply for

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13:07:20 1 Obamacare.

13:07:21 2 Q. But you don't currently have it?

13:07:23 3 A. No.

13:07:24 4 Q. Do you have any Medicaid or anything
13:07:25 5 else that's provided?13:07:26 6 A. No. I'm 57. I'm not eligible for that
13:07:30 7 yet, I don't think.13:07:31 8 Q. Have you incurred any out-of-pocket
13:07:34 9 expenses as a result of your injuries?13:07:36 10 A. To me, a lot, but I can't reiterate
13:07:41 11 them right now or tell you what they are.13:07:43 12 Q. Do you know what those expenses related
13:07:45 13 to?13:07:46 14 A. Well, every time you come to court
13:07:48 15 downtown, it costs to go -- you've got to take the
13:07:53 16 bus. If somebody comes down with you or brings you
13:07:58 17 down, you've got to pay to park.13:08:01 18 Q. Well, how did you get to court? Either
13:08:03 19 the bus or someone drives you?13:08:04 20 A. The bus or somebody picked me up and
13:08:08 21 would drive me.13:08:08 22 I had to pay for the lawyer's fee in the
13:08:10 23 criminal. That was cash.

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13:08:11 1 There are a lot of incidentals. You come
13:08:18 2 down here, you spend all day down here in City
13:08:22 3 Court, are you allowed to eat?

13:08:24 4 Q. Well, that's what I'm trying to figure
13:08:25 5 out. Right. Because you're making a claim for
13:08:28 6 some economic loss as a result of this, and I'm
13:08:29 7 trying to quantify that by asking you what your
13:08:32 8 out-of-pockets were.

13:08:33 9 A. I would like to qualify that for you
13:08:35 10 right now, but I can't. I just can't.

13:08:37 11 Q. Sure.

13:08:38 12 Any other injuries aside from the right
13:08:40 13 shoulder, numbness, pain to your wrists, and pain
13:08:42 14 to the back of your head?

13:08:44 15 A. Not that I know of.

13:08:46 16 Q. Aside from the appointment with your
13:08:48 17 primary care, have you received any other medical
13:08:51 18 assessments or treatment?

13:08:54 19 A. No. I'd like to see a neurologist.
13:08:56 20 I'd like to see a doctor to find out what's wrong
13:08:58 21 with my arms. But no, I have not yet.

13:09:00 22 Q. Any mental health treatment as a result
13:09:02 23 of this incident?

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13:09:03 1 A. No.

13:09:04 2 Q. Any prior injury to your right

13:09:06 3 shoulder?

13:09:08 4 A. No.

13:09:16 5 Q. Do any of the injuries from January 1st

13:09:18 6 prevent you from doing daily activities in your

13:09:22 7 life?

13:09:22 8 A. There's a lot. It's getting worse too.

13:09:26 9 I used to try to keep -- do all the repairs myself.

13:09:31 10 Whatever broke, I'd try to fix it. I've been doing

13:09:34 11 that about a decade. A lot of stuff I've got to

13:09:37 12 ask Earl to help me with now. I mean, simple stuff

13:09:40 13 like taking out the garbage cans every week.

13:09:46 14 My hands numb in one thumb right now when

13:09:49 15 I'm talking to you. And a couple of times I've

13:09:55 16 dropped stuff. Using a hammer, because I'm

13:09:59 17 right-handed, a couple of times I've been using a

13:10:01 18 hammer and just dropped the hammer. Just dropped

13:10:03 19 it. That's --

13:10:06 20 Q. Have you had to hire anybody to help

13:10:08 21 you out around the properties?

13:10:09 22 A. Well, Earl's going to have -- when Earl

13:10:12 23 gets back from this, he'll hopefully be there.

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13:10:17 1 Q. While Earl's gone are you going to have
13:10:20 2 to hire anybody to help you out?

13:10:21 3 A. It depends on whether or not I can find
13:10:23 4 anybody that wants to make peanuts taking out the
13:10:27 5 garbage once a week or make peanuts mowing the
13:10:31 6 grass. There's not a lot of money to be made.

13:10:32 7 Q. Any physical therapy since January 1st?

13:10:35 8 A. Not yet. But, again, not for want of
13:10:40 9 trying. Just for want of resources.

13:10:41 10 Q. Have you taken any medication to deal
13:10:43 11 with your pain or numbness, over the counter or
13:10:49 12 prescribed?

13:10:50 13 A. No.

13:11:04 14 Q. Did you take any photographs of any of
13:11:06 15 the injuries you suffered that day?

13:11:10 16 A. I think I tried to get Earl and Rachel
13:11:13 17 to take pictures of the hands after I was out of
13:11:18 18 the hospital, but that's it.

13:11:24 19 Q. So were photographs taken?

13:11:26 20 A. Yeah, but I don't know if they survive.

13:11:28 21 Q. Who took the photographs?

13:11:30 22 A. I think Earl and Rachel both took some
13:11:34 23 because they've got different kind of phones and

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13:11:37 1 the pictures turn out different.

13:11:42 2 Q. Have you suffered any loss of income as
13:11:45 3 a result of what happened on January 1st, 2017,
13:11:49 4 aside from like the expenses for parking and bus
13:11:52 5 that you've already listed?

13:12:00 6 A. I'm going to say no.

13:12:05 7 Q. Did you keep any records or written
13:12:07 8 statements regarding your injuries or this
13:12:09 9 incident?

13:12:11 10 A. That I produced?

13:12:12 11 Q. Yes.

13:12:15 12 A. No. I think I might have made some
13:12:18 13 notations on medical records that I was able to get
13:12:20 14 later on, but no, I didn't -- you mean like write a
13:12:25 15 description or a diary?

13:12:27 16 Q. Sure.

13:12:27 17 A. No.

13:12:28 18 Q. The notations that you recorded on the
13:12:29 19 medical records, what were they in regards to?

13:12:33 20 A. More highlighting than anything. More
13:12:36 21 just highlighting. Like if I saw something that I
13:12:38 22 didn't think was completely accurate, I'd highlight
13:12:41 23 it.

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13:12:41 1 Q. And did you note what you thought
13:12:43 2 actually happened --

13:12:44 3 A. No.

13:12:44 4 Q. -- compared to what was recorded?

13:12:46 5 A. No. No. I -- I can give you an
13:12:49 6 example of that. It kind of jumps out at me.

13:12:54 7 After I left the CPAP unit and about ten
13:12:58 8 days later I went and saw my primary, she said, in
13:13:02 9 her two paragraphs that she wrote after she looked
13:13:07 10 at the ECMC records, that the doctor had -- the
13:13:11 11 psychiatrist had diagnosed me with a disorder in
13:13:15 12 his three-minute conversation with me. And that
13:13:22 13 was the first I found out about it is when I was
13:13:25 14 talking to that primary ten days later.

13:13:26 15 Q. Had you ever been diagnosed with --

13:13:28 16 A. No.

13:13:28 17 Q. When you say disorder, do you mean
13:13:31 18 mental health related disorder he diagnosed you
13:13:33 19 with, as opposed to some sort of physical --

13:13:40 20 A. I can tell you the name of it. It's
13:13:41 21 sitting in that envelope over there, if I can just
13:13:44 22 for a second look.

13:13:44 23 Q. Sure. Just let me know what you're

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13:13:46 1 looking at.

13:13:54 2 A. Adjustment disorder.

13:13:57 3 Q. And is that one of the records that
13:13:58 4 like you made notations on?

13:14:00 5 A. No. This is the record from Catholic
13:14:03 6 Health where I saw the primary that day.

13:14:05 7 Q. Oh, okay. So your primary physician's
13:14:08 8 at Catholic Health?

13:14:10 9 A. Yeah. And I didn't give you her name.

13:14:15 10 Visit with Jung. J-I-Y-E-O-N is her first
13:14:23 11 name, and her last name is Jung, J-U-N-G, M.D.

13:14:28 12 Q. What day did you see her?

13:14:32 13 A. What date is this dated?

13:14:36 14 1/10. A week later. Ten days later.

13:14:40 15 Q. And aside from that visit with your
13:14:43 16 primary care on January 10th, you've had no other
13:14:45 17 actual examinations?

13:14:46 18 A. Yeah. That's the last one. I couldn't
13:14:48 19 even afford that one.

13:14:49 20 Q. Ever been diagnosed with depression or
13:14:52 21 other mental health related --

13:14:54 22 A. No.

13:14:54 23 Q. -- disorders before?

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13:14:55 1 A. No.

13:14:57 2 Q. Have you given any interviews to the

13:14:59 3 media with regard to this incident?

13:15:02 4 A. Not yet.

13:15:03 5 Q. Do you plan to?

13:15:07 6 A. I don't think so.

13:15:10 7 Q. Have you had any interactions with the

13:15:13 8 Buffalo Police Department since this incident?

13:15:16 9 A. No.

13:15:22 10 MR. OSTROWSKI: You can't participate.

13:15:24 11 MS. HUGGINS: You can't say anything.

13:15:25 12 THE WITNESS: I'm sorry.

13:15:25 13 MS. HUGGINS: So I guess the record should

13:15:27 14 indicate that your son has now said something to

13:15:29 15 you during this.

13:15:30 16 THE WITNESS: Yeah. He reminded me of

13:15:32 17 something. I'm sorry.

13:15:32 18 BY MS. HUGGINS:

13:15:33 19 Q. Without -- without having your son

13:15:35 20 remind you of something, have you had any -- do you

13:15:39 21 have a recollection of having interactions with the

13:15:40 22 police since this incident?

13:15:42 23 A. No. But with his reminding me, I do.

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13:15:46 1 Q. What was the nature of that
13:15:47 2 interaction?

13:15:47 3 A. 33, where I stay in the back of 33, the
13:15:54 4 door was kicked in over there about between 1 o'clock
13:15:56 5 in the morning and 4, when I was next door watching
13:15:59 6 the kids, and that was reported.

13:16:06 7 Q. To the police?

13:16:07 8 A. To the police. They came, they took
13:16:09 9 the report, and they left. And it was one officer
13:16:12 10 there.

13:16:12 11 Q. Was it any of the officers that you saw
13:16:14 12 on --

13:16:14 13 A. No.

13:16:14 14 Q. -- January 1st?

13:16:16 15 A. No. No.

13:16:18 16 Q. Aside from the testimony you're giving
13:16:20 17 with me today, have you had any other conversations
13:16:23 18 with City of Buffalo employees regarding this
13:16:25 19 incident on January 1st?

13:16:28 20 A. I don't think so. I don't think I know
13:16:32 21 any City of Buffalo employees.

13:16:34 22 Q. Have you made a claim against any other
13:16:38 23 party aside from the City of Buffalo with regard to

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13:16:40 1 this incident?

13:16:44 2 A. No. Other than the stuff that Jim has
13:16:46 3 done, no.

13:16:47 4 Q. Do you have any social media accounts?

13:16:49 5 A. Yeah.

13:16:50 6 Q. Did you write anything about this
13:16:51 7 incident on your social media?

13:16:56 8 A. Oh, my. No, I don't think so. Not
13:16:59 9 overtly. I didn't refer to it overtly. No. I
13:17:04 10 think I can honestly say no, I didn't.

13:17:07 11 Q. So if you say not overtly, do you mean
13:17:10 12 to suggest that you might have wrote something that
13:17:12 13 vaguely references this?

13:17:15 14 A. Yeah.

13:17:16 15 Q. What did --

13:17:17 16 A. Not the minutia of it, but the fact
13:17:19 17 that people are arrested, taken to forensic
13:17:23 18 centers, denied appropriate medical care, and that
13:17:26 19 the police lie. Yeah, that I have referenced on my
13:17:30 20 social media account.

13:17:31 21 Q. What type of social media accounts do
13:17:33 22 you have?

13:17:33 23 A. All I have is Facebook. I don't tweet

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13:17:36 1 or anything else like that.

13:17:37 2 Q. What's your user name on Facebook?

13:17:39 3 A. James Kistner.

13:17:41 4 Q. Is it public or private?

13:17:43 5 A. It's public.

13:17:49 6 Q. Do you mean to suggest that you were
13:17:51 7 denied medical care on January 1st, 2017?

13:17:54 8 A. I mean to suggest that I was denied
13:17:57 9 appropriate medical care on January 1st.

13:17:59 10 The officers at Schmarbeck should have
13:18:03 11 allowed the ambulance to come. They should have
13:18:06 12 allowed me to go to the hospital of my choosing,
13:18:10 13 like a Catholic Health hospital, not a forensic
13:18:14 14 unit.

13:18:14 15 And they didn't do that because they were
13:18:17 16 more concerned with trying to cover up the fact
13:18:19 17 that they'd run somebody over with a police car
13:18:23 18 than they were -- they had just injured somebody
13:18:26 19 and he was laying in the middle of the street.

13:18:28 20 Q. Well, did you ever make a request to go
13:18:30 21 to a Catholic Health hospital to the Buffalo Police
13:18:34 22 Department?

13:18:34 23 A. My son was calling an ambulance and

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13:18:36 1 they told him to stop.

13:18:37 2 Q. So it's --

13:18:38 3 A. They were well-aware I wanted to go
13:18:40 4 there.

13:18:40 5 Q. I want to just direct you to answer my
13:18:42 6 specific question. Did you ever make a request to
13:18:44 7 the police, on January 1st, 2017, to go to a
13:18:46 8 Catholic Health hospital?

13:18:49 9 A. I thought I was going to jail. No.

13:18:51 10 Q. Okay. Did you ever make a request for
13:18:54 11 any other type of specific medical treatment that
13:18:57 12 you deemed appropriate for yourself on January 1st,
13:19:00 13 2017, to the Buffalo Police Department?

13:19:02 14 A. Yeah. After they had brutalized me and
13:19:04 15 put the handcuffs on and I was in the hospital, I
13:19:07 16 asked them to take the handcuffs off because they
13:19:09 17 had hurt my wrists with the handcuffs and that they
13:19:12 18 had injured me and --

13:19:14 19 Q. That was that first trip to ECMC?

13:19:16 20 A. Yeah.

13:19:17 21 Q. Okay.

13:19:20 22 A. In the morning.

13:19:22 23 Q. So with regard that post you think you

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13:19:24 1 did on Facebook that might vaguely reference

13:19:27 2 this --

13:19:27 3 A. You're -- you're more than -- I'm

13:19:28 4 sorry.

13:19:28 5 Q. -- I'm going to ask you just to

13:19:31 6 preserve it, and I will make a request through your

13:19:33 7 attorney for a copy of it.

13:19:34 8 A. I -- like I said, I don't think there

13:19:37 9 is one, so I would be preserving something that

13:19:40 10 doesn't exist. I don't think there are any

13:19:42 11 specific references to this.

13:19:47 12 My Facebook account is yours to copy. It's
13:19:51 13 public. You can go on there and print all of it or
13:19:54 14 any part of it, but if you want to admit that you
13:19:57 15 want to talk about part of it, then talk about all
13:20:00 16 of it.

13:20:00 17 Q. The -- have you ever been involved in

13:20:03 18 any civil lawsuits before?

13:20:06 19 A. Yeah. I've had small claims as a
13:20:09 20 landlord, and I've had --

13:20:16 21 Q. Have you ever filed any prior notices
13:20:17 22 of claim against the City of Buffalo?

13:20:19 23 A. No.

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13:20:28 1 MS. HUGGINS: I don't have any other
13:20:30 2 questions.

13:20:32 3 MR. OSTROWSKI: Thanks a lot.

4 (Proceedings concluded at 1:20 p.m.)

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing proceedings, which were taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the proceedings were then
10 reduced to writing in my presence and under my
11 direction. That the proceedings were taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

Anne T. Barone

19 -----
ANNE T. BARONE, RPR,
Notary Public.

20

21

22

23

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